United States Court of Appeals

for the Second Circuit

APPENDIX

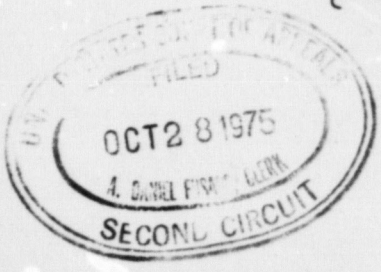
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ORIGINAL

In The

United States Court of Appeals

For The Second Circuit



B
P/S

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

vs.

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW,

Defendants-Appellants.

JOINT APPENDIX

Volume II, pp. 364A – End

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of what material Mr. Curran saw, I am going to sustain the objection.

MR. BERGADANO: On behalf of my clients, your Honor, it had no relationship to the two counsel.

THE COURT: There has been no indication relative to your two clients in this offer.

MR. BERGADANO: Thank you, your Honor.

MR. MC INERNEY: Skipping down to page 67, line 7.

"Q You testified you had a conversation with the port agent relavant to Mr. Morrissey's arrest.

"Can you tell us what you said to the port agent and what he said to you?

"A We discussed that -- I asked him to let me know what had happened and he is the one that described, the same as Charlie Snow did, the disruption on the floor and the messing up of the floor with the literature and harassing of the members, Morrissey with the group, refusing to leave the hall.

"They served a notice. They had no alternative. I told him that Morrissey didn't enjoy any other rights than any other member did and that he had no right abusing the people in the hall, abusing the rules that applied to everybody, that he was no special person.

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He was only a member.

"Q Are there any rules about admitting persons into the hall that are no members of the union?

"A That is law. There is a law that applies there.

"The National Labor Relations Board in a number of cases sometime back made us open the hall to non-members to come in saying it was -- but they had to abide by the rules of the hall.

"Then we had groups. It was group one, group two, group three, group four.

"Group one were the senior members of the union, had been there the longest.

"Group two were new men, some of them had books and maybe some of them didn't have books, some of them based on seniority.

"We tried to keep out all of those that had bad reputations in the way of gambling, bookmaking, dope addicts, alcoholics and stuff like that. Those we tried to keep out.

"Q Did Mr. Morrissey fit into any of those categories?

"A No, no.

"Q Are persons from the general public walking

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along the street, are they permitted to go into the union hall?

"A No."

MR. MC INERNEY: Skipping down to page 68, line 6.

I will pass that, your Honor.

Make it line 8.

"Q After you heard Mr. Morrissey had been arrested, did you ask what the charges against him were?

"A No, I didn't.

"Q Did you take any steps to have the charges against Mr. Morrisey dropped?

"A No, I did not.

"Q When you spoke to Mr. Freedman, could you fix the date of that conversation more precisely?

"A I would say one week after."

Mark that for identification, please, the next number.

(Plaintiff's Exhibit No. 19 was marked for identification)

THE COURT: This might be a good opportunity for us to take our afternoon recess. It is somewhat after three.

We will take a ten-minute recess.

gtrll0

The jury will please not discuss the case among themselves. Keep an open mind on all facets of the case.

(Recess)

(In open court; jury present)

THE COURT: You may proceed, Mr. McInernev.

MR. MINA: At this time, the defendant National Maritime Union, Shannon Wall, Joseph Curran, James Nimmo and Charles Snow all object to the introduction of this letter into evidence on the grounds it was dated April 9, 1970, was written by Mr. Morrissey, is self serving, cumulative and, again, refers to that Morrissey action.

THE COURT: This is 19 for identification.

MR. MC INERNEY: Yes, your Honor.

THE COURT: I think when we had the [illegible] our recess that had been marked for identification and had been shown to counsel.

(Pause)

THE COURT: The objection is sustained.

MR. MC INERNEY: Your Honor, if you look on page 72, that is the connection, beginning with the question on line 6.

THE COURT: I am reading also, on page 73.

gtrlll

MR. MC INERNEY: That's right, your Honor.

THE COURT: I will adhere to my ruling.

MR. MC INERNEY: This for identification, please.

(Plaintiff's Exhibit No. 20 was marked for identification)

MR. MC INERNEY: It is the same thing.

MR. MINA: Your Honor, the objection is on basically the same grounds.

MR. MC INERNEY: It is the same thing, your Honor (handing).

THE COURT: All right. This is now 20 for identification.

MR. MC INERNEY: The testimony that is relevant on that letter begins at page 74, your Honor.

THE COURT: All right. I am first reading the letter.

(Pause)

THE COURT: I will make the same ruling to 20 as I did to 19.

These are both letters written by Mr. Morrissey and I do not see them as admissible in the context of the present offer or this lawsuit.

MR. MC INERNEY: Your Honor, would you allow

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me to make a record on my reasons for their offer?

THE COURT: At the side bar?

MR. MC INERNEY: Yes.

THE COURT: You may.

(At the side bar)

MR. MC INERNEY: The purpose of the offer, your Honor, is to show that Mr. Morrissey was making attempts to reach the membership of the union through other means than distributing pamphlets and if he could not do it through the Pilot and if he could not do it through the pamphlets, he was effectively silenced, and that is the purpose of the offer, your Honor, that he had no means of communicating his ideas to the members.

THE COURT: I understand your offer but, among other things, you would be offering these letters for the truth of the matter asserted therein.

MR. MC INERNEY: No, your Honor, no, no.

THE COURT: You are offering these as letters which he sent?

MR. MC INERNEY: Yes, your Honor, and received by the National Office and passed on by the National Office.

THE COURT: How am I supposed to admit these and tell the jury that they are not to consider the truth

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of the matter asserted?

The earlier letter --

MR. MC INERNEY: Every fact contained in that letter is true and accurate, your Honor, and will be borne out by the record which you already said you would take judicial notice of.

THE COURT: Yes, I will, and, therefore, there is cumulative in that regard.

MR. MC INERNEY: No, your Honor.

The only purpose I am offering it is to show that Mr. Morrissey was making other attempts to communicate his ideas to the membership.

THE COURT: Mr. Morrissey could have indicated when he was on the stand that he wrote letters and asked that they be published in the Pilot and they were not published, and that would have been sufficient.

To do it in this form with these letters, I hink, is inappropriate at this time, and though you have made your offer of proof at the side bar, I am going to sustainthe objection to 19 and 20.

MR. MC INERNEY: Will you permit me to recall Mr. Morrissey for that purpose, limited purpose, before the plaintiff rests?

THE COURT: Yes.

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MR. MC INERNEY: Thank you, your Honor.

MR. BERGADANO: Thank you, your Honor.

(In open court)

THE COURT: You may proceed, Mr. McInerney.

MR. MC INERNEY: Page 76, your Honor, question on lines 16 and 17.

The answer appears on page 77, line 5.

"Q In addition to Mr. Snow, Mr. Sovel, the port agent and Mr. Freedman, did you speak to anyone else about Mr. Morrissey's arrest?

"A I spoke to others, but I can't remember who they were. There were a thousand members and officials of the union at the headquarters at the time and I'm sure I spoke to someone, but who they were I don't remember. They spoke to me about it.

"Q They spoke to you about it?

"A Yes.

"Q Did you at any time suggest to anyone that the charges against Morrissey should be dropped?

"A No.

"Q As part of your president's report" --

Your Honor, I will just read the question without bringing in the exhibit. I can do that either way.

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THE COURT: All right, why don't you read the question.

"Q You said two of the most difficult obstacles to the election involves suits brought against the union" --

MR. MINA: Your Honor, may I make an objection?

We already talked about the date of this president's report and the same objection is again made that it has no relevancy to this lawsuit.

THE COURT: Was the report itself offered? I seem to remember that it was.

MR. MC INERNEY: I don t think it is the same one, your Honor.

MR. BERGADANO: It is not the same one, your Honor.

THE COURT: There was one which was at least marked for identification as Plaintiff's 8.

MR. BERGADANO: Yes, sir. This one refers to something which was marked as Exhibit 3, which has not been offered, not even marked for identification and is not before the Court.

THE COURT: What is the date of it?

MR. MC INERNEY: August 1969, your Honor.

MR. BERGADANO: I have here December of 1969.

That was the Pilot of December 1969, your Honor, which was excluded from evidence.

MR. MC INERNEY: I will withdraw it, your Honor.

THE COURT: You want to withdraw it, I note the answer and it doesn't seem to --

MR. MC INERNEY: I will withdraw it, your Honor.

THE COURT: Very well.

MR. MC INERNEY: Page 80:

"Q Mr. Curran, on July 20, 1971, the charges against Morrissey were formally dismissed in the criminal court.

"I ask you if anyone reported that fact to you?

"Mr. Sovel says, 'When?'"

MR. BERGADANO: Answer:

"A Sure, it was reported to me.

"Q It was reported to you?

"A Yes.

"Q Can you tell me when and where it was reported to you?

"A Right after it happened.

"Q Who reported it?

"A I don't remember who reported it.

qtr'17

"Q Can you tell me where it was reported to you?

"A I think it was reported to me by telephone.

"Q Do you know who made the call?

"A I don't remember now. It was one of -- I think it was, I can't be sure, I think it was the port agent, Joe Labaczewski, I think.

"Q Where were you called?

"A In my office. I'm pretty sure it was there.

"Q What steps did you take after having received the phone call?

"A None.

"Q Did you have any conversation with Mr. Wall about it then?

"A No, I don't believe so, not then. I think I had a conversation with him the next day about it.

"Q Can you tell me who was present at the time you had your conversation with Mr. Wall?

"A Mr. Wall.

"Q No one else?

"A That's right.

"Q Can you tell me what was said in substance, tothe best of your recollection?

"A The best of my recollection is that we just discussed back and forth what happened in court and that

gtrll8

is all.

"Q Had you asked the port agent to make a report to you at the conclusion of the trial?

"A No. He did it out of courtesy.

"Q Did you tell him you would be interested in the outcome?"

MR. MINA: Objection, your Honor. That was not the question.

MR. MC INERNEY: I am sorry, your Honor, skip down to line 11.

THE COURT: Yes, and there is an answer.

MR. MC INERNEY: I will repeat the question.

THE COURT: No, there is a question.

Go ahead, answer.

MR. MC INERNEY: All right.

"A I didn't tell him anything.

"Q Can you tell me more specifically what was said by you and what was said by Mr. Wall at the meeting of July 21, 1971?

"A No, I can't tell you anything more specifically. We just discussed it."

Page 5 of volume 2:

"Q In 1967, were you the chief executive officer of the NMU?

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"A Yes.

"Q Is the Pilot the official publication of the NMU?

"A Yes.

"Q As the chief executive officer, were you interested in what appeared in the Pilot?

"A Yes."

MR. MINA: Your Honor, at this time I would make the objection if the Court would look at the following questions, I think it will see that they relate to 1967 and articles appearing in the Pilot in 1967 and are not relevant to this lawsuit at all.

MR. MC INERNEY: Your Honor, we have had a ruling on that and I am not going into those questions.

THE COURT: All right, then let us pass.

MR. MC INERNEY: May I ask him the next question and get the next answer?

THE COURT: Yes.

BY MR. MC INERNEY:

"Q Having an interest in the Pilot, did you read the Pilot?

"A Yes."

Skipping down to 18, your Honor, may I ask him that?

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THE COURT: You might as well take 15.

MR. BERGADANO: Yes, your Honor, in fairness.

BY MR. MC INERNEY:

"Q Did you read all of what appeared in the Pilot?

"A No.

"Q Weren't you a member of the editorial board of the Pilot?

"A Yes.

"Q Did you read the headlines at least in the Pilot?

"A Yes."

Skipping down to page 17, line 12.

MR. MINA: Before we get into this, your Honor, I am going to object.

I believe the Court's ruling this morning relates to what these questions go into.

THE COURT: Do you intend to read the rest of page 17?

MR. MC INERNEY: From line 12 to 19, your Honor.

THE COURT: If you can show me that is a remark that was attributed to Mr. Curran and made relative to Mr. Morrissey, I might consider it.

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But if you will note the upshot of that portion of the record does not seem to follow out the line I just indicated.

MR. MC INERNEY: Your Honor, it goes on beginning at page 20, line 20.

I would remind your Honor that Mr. Curran is a hostile witness, if not the most hostile witness.

THE COURT: You need not make speeches.

The jury will disregard that remark.

It is fine that you have a question there, but I must suggest that all he says in the final analysis is the minutes speak for themselves, doesn't he?

How far do you intend to read so then I will rule on the whole offer?

MR. MC INERNEY: Your Honor, I am skipping down right past that, I am skipping down pretty near to the end of it.

Certainly the next part I would read would be -- your Honor, if I read that, I will rest with Curran.

THE COURT: The jury is not to take any inference from that.

MR. BERGADANO: I am sorry, your Honor. I apologize.

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THE COURT: Where is it you wanted it to start now and where did you want to end?

MR. MC INERNEY: Page 17, line 12, and I will conclude with Mr. Curran at line 19.

THE COURT: In other words, all you want to do is read from page 17, line 12 to line 19?

MR. MC INERNEY: That's right, your Honor.

THE COURT: Of course, you would also read, I am sure, for completeness, through line 24, wouldn't you?

MR. MC INERNEY: Well, your Honor, if I read that -- that is one of those things -- I would have to read on page 20 the question and page 21 the answer which ends at line 7.

THE COURT: Is there an objection, gentlemen?

MR. MINA: Your Honor, I withdraw the objection.

MR. BERGADANO: Your Honor, it does not apply to my client.

THE COURT: That is correct.

You may read it, sir, there being no objection and there is no applicability of this case to anyone other than Mr. Curran and the union.

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BY MR. MC INERNEY:

"Q Did you ever refer to Morrissey as lower than scum?

"A I can't recall that.

"Q Let me ask you if this refreshes your recollection.

"A Off the record let me say, I wouldn't use that term. Usually I use that term lower than whale's shit, which is at the bottom of the sea."

MR. MINA: Can we have the rest of it?

THE COURT: Yes. Read it. You indicated you would read it. If you don't, the Court will.

MR. MC INERNEY: Straight through?

"Q Let's put it on the record.

"A No, I do not refer to him as that. I just said I do not refer to anybody as scum.

"Q Lower than scum?

"A No."

Skipping down to page 20, line 20:

"Q I want to know who you were talking about when you said the Landrum-Griffin Law said he and his ilk must remain in the union and we have no recourse even though they foul up each rule and principle, even though they become lower than scum?"

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The answer is on page 21, line 3.

THE COURT: This is another question which I think you should read and then read the answer, if you wish.

BY MR. MC INERNEY:

"Q I want to know if that refreshes your recollection as to any of the questions I asked you earlier.

"A No, it does not. Again I repeat, the minutes of the convention are what they are. I don't deny anything that is in the minutes of the convention."

THE COURT: Have you concluded reading from Mr. Curran's deposition?

MR. MC INERNEY: From Mr. Curran's deposition, your Honor.

THE COURT: Ladies and gentlemen, I have spoken with counsel. There are a number of matters which I want to take care of relating to this case and other matters which do not concern the jury and, therefore, I am going to recess court at this time.

In addition, I am going to give you some good news. We are going to resume tomorrow morning at 11:30 a.m. Then we will proceed to about 1, take a luncheon break, proceed again until approximately 4:30.

gtrl25

The case is moving along and I think that we are making just about the progress we had anticipated when we discussed the case, that is, counsel and Court discussed the case at its outset.

A lawsuit is like a jigsaw puzzle. You heard some live testimony, you have heard some deposition reading, you will hear some more. Some exhibits are introduced into evidence. The question of putting the whole puzzle together, you will hear counsel's version of that puzzle when they sum up to you. The Court will then charge you on the law and thereafter the case will be for you to consider.

Please, as you go home this afternoon and return tomorrow morning, do not discuss the case among yourselves nor remain in the presence of any person who might be discussing the case. In the event you should see anything about this case on television, hear anything about the case on the radio or read anything about the case in the newspapers or any of the media, you are directed to report the matter to me at once.

Finally, as I say, this is a jigsaw puzzle. We still have more testimony and depositions which I anticipate you will be hearing.

Keep an open mind on all facets of the case

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until it has been completed and we will give it to you following my charge.

The jury is excused and directed to return tomorrow morning at 11:30 a.m.

Goodnight, everybody.

(Adjournment taken to April 16, 1975, at 11:30 a.m.)

- - -

gtlk 1

JAMES M. MORRISSEY,

Plaintiff,

-vs.-

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARGES SNOW, ABRAHAM E. FREEDMAN, CHARLES SOVEL, and JAMES NIMMO,

72 Civ 2363

Defendants.

April 16, 1975
11:50 a.m.

(Trial resumed.)

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen.

We have been waiting since our starting time because it was reported to me that juror number 3 had not come in this morning.

I have also learned that she was suffering from a cold yesterday. She indicated this to the clerk and as a matter of fact counsel noted she seemed uncomfortable.

In view of that fact and in view of the fact that we are fortunate to have two alternate jurors, I am going to excuse juror number 3, who is not here, and place our first alternate juror, Mrs. Walker, in seat number 3.

Mrs. Walker, you are now a member of the jury.

Everybody is healthy from here on.

gtlk 2

Is there anything that counsel would like to add for the record at this time?

MR. McINERNEY: No, your Honor.

MR. MINA: No, your Honor.

MR. BERGADANO: No, your Honor.

THE COURT: Very well.

We will proceed now. We will conclude this somewhat abbreviated morning session a little after one, at some convenient time at or around one o'clcok. We will resume an hour afterwards and I would suggest we will go to some 4:30, quarter to five today and we will resume our regular schedule in the morning.

I appreciate your indulgence this morning. I am sorry for the additional delay, but we felt it incumbent upon us to wait a reasonable time for juror number 3 and now we will proceed.

Mr. McInerney.

MR. McINERNEY: Plaintiff calls Mr. Wall.

THE COURT: Mr. Shannon Wall.

S H A N N O N J. W A L L, called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McINERNEY:

gtlk 3

Q Were you secretary - treasurer of the National Maritime Union from June 1966 through 1973?

A Yes.

Q And that service was continuous?

A That's correct.

Q Mr. Wall, I show you Plaintiff's 4 in evidence (handing).

Did you place your signature on the original of that document?

A Yes, I did.

Q When did you do that?

A To the best of my recollection, I can not recall the date that this was signed.

Q Give us your best approximation.

A The only approximatation I could give under the deposition was having looked at one of the documents in evidence --

Q Mr. Wall, can you answer my question very simply?

THE COURT: He seems to be trying to. Let us give him a chance to complete the answer. If it is not responsive you can act accordingly.

Go ahead, sir.

A One of the documents that was entered into the evidence indicated that at that time I had placed the posting

of this notice about one year prior to the signing of that letter, so that it was a year prior to that document.

Q Do you remember appearing at my office on the 9th day of April, 1974 to testify at your deposition?

A Yes.

Q Do you remember I asked you this question, "Did you do it before July of 1971?"

Beg pardon, Mr. Wall?

Do you remember giving this answer, "I don't recall if it was before or after"?

A I recall the question and I recall the answer, yes.

Q Was your answer true?

A Certainly it was true.

Q Do you remember I asked you this question:

"You have no recollection at all of when you placed your signature on that paper?"

And did you make this answer, "No, unless I find something that would put it in some context of time, I cannot recall at this instant, at this moment."

Did you make that answer?

A Yes, and that's the reference that I made to the document that occurred later in the testimony.

Q Now, you notice that the document is unsigned, do you not?

gtlk 5 Wall - Direct

A No, it is signed.

MR. MINA: Objection. It is not unsigned, your Honor.

MR. McINERNEY: I mean undated.

THE COURT: He corrected counsel. He said, "No, it is signed." The answer is on the record.

Q I beg your pardon, Mr. Wall, I mean to say undated. It is undated.

A It is undated.

THE COURT: Just a moment.

Our juror has arrived.

We waited until about four minutes ago.

I am just going to talk to you. We are going to excuse you.

(A conference at the bench, off the record.)

THE COURT: I am sorry.

BY MR. McINERNEY:

Q Is it your practice to sign undated notices?

A I think as I stated in the deposition, I don't know that there was any practice or not.

This notice happens to be undated.

Q How as that notice brought to the attention of the membership?

MR. MINA: Objection, your Honor.

THE COURT: It calls for a conclusion.

MR. McINERNEY: I withdraw it, your Honor. I withdraw it.

THE COURT: Yes. All right.

Q Did you ever see that notice posted in the union hall?

A I believe, again, I testified in that deposition that I had no recollection of physically walking in any part of the union hall or headquarters and seeing the notice posted.

Q How did that notice come about?

A It came about at the request of Charley Snow, who was at that time the head of the security in the headquarters or for the whole union, and it was made up at his request.

Q Mr. Snow was the chief security officer at that time?

A That's correct.

Q What did he tell you?

A That in order to maintain an orderly hiring hall and union office and if he had something posted that reflected the policy of the union, that he would -- It would assist him in carrying out his duties.

Q Was Mr. Snow in a decision-making capacity at the

gtlk 7 Wall - Direct

union.

A I believe I testified that, yes, he had some decision-making capacities.

Q On entering the union hall, Mr. Wall, is there a policy you must show your union book at the door?

A Your union book, your seamen papers or some other means of identification that you have business in the union hall.

Q In addition to Charley Snow, did you speak to anyone else before having that notice typed up?

A I believe I have testified in the deposition that there were conversations with at least one other officer, if not more.

Q When did you do that?

A At approximately the time the request was made.

Q You recall at that deposition when I asked you the same question, when did you do that, you made this answer:

"Again, I couldn't put a time frame on this"?

MR. MINA: Your Honor, at this point, for the record, I would point out that Mr. Wall's first answer related to one of three depositions.

At the first one he did not remember the date. He has already testified that at some point between the first and third a document went into identification which

which gave him a time to work on.

THE COURT: You object to the form of the question?

MR. MINA: Yes, your Honor.

THE COURT: Sustained.

You can restate the question, if you will.

MR. McINERNEY: I will withdraw it.

Q Did Mr. Snow tell you he was having difficulty with any particular members?

MR. MINA: Your Honor, could we respectfully ask for a time on this?

THE COURT: I think that is a reasonable request.

Q Shortly before that notice was signed by you.

A I believe that I had testified that both the port agent, Joe Labaczewski, and Charles Snow had indicated that there had been disturbances in the hiring hall and in the past most people had complied with their request to make their distributions outside and I believe there were certain people had been mentioned, yes.

Q Was Morrissey among them?

A Morrissey could have been amongst them, yes, but up until that time he had complied with their request to distribute outside.

Q Who was your opponent in the 1969 election?

A Mr. Morrissey. Or opponents. There were others.

gtlk 9 Wall - Direct

Q How long was it after you spoke to Mr. Snow that you spoke to anyone else before you drafted that notice?

A I don't recall. It was approximately either the same day or during the course of business the next day.

Q Did there come a time that Mr. Morrissey asked you in the Naitonal office to publish his material in The Pilot?

A You asked me did he ask me specifically or did he make a request of the National officers?

Q Did he make a request of the Naitonal officers?

MR. MINA: Objection.

THE COURT: Sustained.

Q Did he ask you specifically?

A No.

THE COURT: Just a minute, please.

(Pause.)

THE COURT: You may proceed.

Q When did you receive your first notice of the arrest of James Morrissey?

A I can't put an exact time on it, but sometime after the fact.

THE COURT: Was it that day or the following day?

THE WITNESS: The closest I could put it the possibility of the following day. Nothing sooner than that.

gtlk 10 Wall - Direct

Q What were you told?

A I was told that Morrissey had attempted to pass out literature, had been asked to leave a number of times, had been refused and he had been arrested and that the president of the union and the general counsel of the union were aware of the situation.

Q Do you recognize Morrissey as the principal spokesman for the opposition?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q Is it possible you typed that notice in June of 1971?

MR. MINA: Objection, your Honor. We have been through this and the witness has stated that he does not remember exactly when it was typed.

THE COURT: I recognize that.

Counsel is probing further.

Of course, anything is possible, and I think if you rephrase your question, I will permit you to inquire further.

Q Do you know whether or not that notice was typed in the month of June of 1971?

THE COURT: What is your best recollection of the matter, sir?

THE WITNESS: My best recollection of the matter is the document that I had written approximately that time at which I said it had been typed, posted and distributed a year earlier.

Q At your deposition did we ask you to produce any such document? I am talking about the deposition on April 9th, 1974.

A You asked me if I could produce what?

Q Any records that would refresh your recollection as to when that document, and I am referring you to Exhibit 4 in evidence, was actually typed?

MR. MINA: Could we have a page number?

MR. McINERNEY: 37.

A There was nothing except the document that has been referred to in the testimony.

Q What document is that, Mr. Wall?

A I don't recall the citation number or the -- but it was read in the deposition.

Q Wasn't it the document itself?

A No, sir.

Q As secretary - treasurer of the union, was it your duty to keep all books, documents, records and all effects of the National Maritime Union?

A That's correct.

gtlk 12 Wall - Direct

Q And was a search -- did you do a search to find out if there was any document relating to that document within the union?

A Yes, we did.

Q And at the deposition on April 9th, did you produce any such document?

MR. MINA: Your Honor, just for purposes of clarification, is this question limited to only for the April 9th deposition as opposed to the following two?

THE COURT: It is not clear to me.

Why doesn't the witness try to answer the question to the best of his ability?

If you don't understand the question and what it related to, you may indicate you don't understand and counsel will put a new question to you.

Mr. Reporter, would you read the last question back to the witness, and if he understands it, he should answer it.

(Record read.)

A To my recollection, none was produced.

Q And no written evidence of policy could be found, is that right?

MR. MINA: At the deposition on April 9th?

MR. McINERNEY: Or at any other time.

gtlk 13 Wall - Direct

THE COURT: At any time.

MR. McINERNEY: And I ask counsel to produce any written --

THE COURT: Let us ask the witness the question. I think that is what is appropriate at this point.

MR. McINERNEY: All right, your Hono.

A I think that was brought out in the previous lawsuit, that we were unable to produce written evidence that that policy had been in existence.

Q So there was no writing that refreshed your recollection about this writing, was there?

MR. MINA: Objection, your Hono.

THE COURT: Sustained.

MR. MINA: They are two different question.

THE COURT: Sustained.

I think the objection there properly lies and I sustained it. Next question.

It is argumentative.

MR. McINERNEY: Your Honor, it is an adversary party I have on the stand.

THE COURT: I am not arguing that point, but I think you still should not argue with the witness in question form. Another question in that area would be appropriate.

That I will permit. I am not cutting you off from

the line of questioning.

Q Do you have any other written evidence relating to this document which you can produce here today?

A Do I have any other written evidence --

Q Yes, yes.

A -- pertaining to this document?

Q Yes.

MR. MINA: Referring to --

MR. McINERNEY: Plaintiff's Exhibit 4 in evidence.

THE COURT: The notice.

A To the notice itself?

Q Yes.

A No, I don't think so.

Q Is it fair to say, Mr. Wall, that there is no other written evidence?

MR. MINA: Objection.

THE COURT: That you know of.

Q That you know of.

A Pertaining to this document?

Q That's right.

A No.

Q Was that notice or anything pertaining to that notice ever published in the N.M.U. Pilot?

THE COURT: So far as you know.

A Well, if you keep it in the reference to the deposition or the rest or the posting of this notice, no.

There has subsequently been a publishing in the Pilot.

MR. McINERNEY: I move to strike that, your Honor, as not responsive.

THE COURT: Yes, I will strike it.

The jury will disregard the answer.

BY MR. McINERNEY:

Q Up to and including July 20, was there ever anything relating to that notice published in the N.M.U. Pilot, that you know of?

A June 20, 1971?

Q 1971, yes.

A No, there was not.

Q When you signed that notice, did you ask that it be published in the N.M.U. Pilot?

A No, I did not.

Q Were you at that time a member of the editorial board?

A Yes.

Q At the time you signed that notice?

A Yes.

Q And have you been a member of the editorial board

of the N.M.U. Pilot since the day that notice was signed?

A Yes.

Q And in all that time, you never asked that that notice or anything relating to that notice, up until July 20, 1971, be published in The Pilot, is that right?

A That's correct.

Q What did you mean by unauthorized literature in that notice?

A The authorized literature is that published by the union, the official Pilot, the pension and welfare documents and other official literature of the union and its pension and welfar plans.

Q So that anything Mr. Morrissey would publish would be unauthorized, is that right?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q In July of 1971, at the time of Mr. Morrissey's arrest, were you concerned that Mr. Morrissey might advise the membership of the other action that was pending against you?

MR. MINA: I object to the form of the question.

THE COURT: Sustained as to form.

Q Was there another action pending against you and Mr. Curran and others in the federal court?

gtlk 17 Wall - Direct

MR. MINA: Objection.

THE COURT: At what time?

MR. McINERNEY: July of 1971.

THE COURT: I will let him answer it.

A There was another lawsuit, yes.

Q And at that time had Mr. Morrissey claimed that you were responsible for substantial --

MR. MINA: Objection, your Honor.

MR. McINERNEY: I will withdraw it. I will withdraw the question, your Honor.

THE COURT: The jury will disregard the question.

Q What were your duties as one of the editorial board of The Pilot?

A The editorial board acts on when its called into action by the editor of The Pilot in which he would feel that material he had received for publication had questions, was questionable to be published.

Q Did you, as a member of the editorial board, ever take any exception to anything that was going into The Pilot?

A There were things that were not published in the Pilot, yes, that were ruled out by the editorial board.

MR. McINERNEY: Your Honor, I move to strike that out.

gtlk 18 Wall - Direct

THE COURT: And you participated in those decisions did you?

THE WITNESS: Yes, sir.

Q Do you remember testifying in my office on your deposition and I asked you this question --

MR. MINA: May we have the page?

MR. McINERNEY: Page 77.

Q "Did you, as a member of the editorial board, ever take any exception to anything that was going into The Pilot?"

And your answer was, "On my own?"

"Q Yes."

And you made the answer, "No, sir."

A Yes.

Q Was your answer true?

MR. MINA: Objection.

THE COURT: Sustained.

MR. MINA: I just object, because Mr. McInerney is inferring there is a difference between the answer that was given.

THE COURT: No, there is no inference being given.

He is examining an adverse party.

The jury is to draw no inferences from his questions.

gtlk 19 Wall - Direct

The facts that you will find and the inferences you will draw in this case will come from the combination of the questions and the answers to those questions. It is in the answers that you are going to find the facts, ladies and gentlemen.

MR. McINERNEY: Mark this for identification.

xx (Plaintiff's Exhibit number 21 was marked for identification.)

BY MR. McINERNEY:

Q Can you identify 21 for identification, Mr. Wall?

A Can I identify it?

Q Yes.

A Yes.

Q Is that part of the campaign literature used in connection with your 1966 election campaign, you and Mr. Curran?

A This was a document that was put out by the rank and file members of the N.M.U. on the Curran team. I was an official of the union at the time and not a member of the rank and file committee.

MR. McINERNEY: I offer it in evidence.

MR. MINA: Objection.

THE COURT: May I see it, please?

(Pause.)

MR. MINA: Again, for the record, the purpose of the objection obviously is this was 1966 and has nothing to do with this lawsuit.

THE COURT: The objection is overruled.

I would note that there seems to be similar material already admitted as to the union in Plaintiff's 5.

MR. BERGADANO: If your Honor please, may we get a stipulation from Mr. McInerney or in lieu of that a ruling by your Honor that that exhibit has no relationship whatsoever to my clients?

MR. McINERNEY: Oh, yes, your Honor.

MR. BERGADANO: And it is not being offered against my clients.

MR. McINERNEY: I am not offering it against Mr. Bergadano's clients.

THE COURT: It shall not be considered in any way, shape and form when and if the jury considers the claim or claims against Mr. Freedman and Mr. Sovel.

xx (Plaintiff's Exhibit 21 was received in evidence.)

BY MR. McINERNEY:

Q Do you know how 21 in evidence was distributed, MR. Wall?

A No, I do not.

Q Does Mr. Curran have a home in Boca Raton, Florida?

A Yes.

Q Have you telephoned Mr. Curran from time to time at that home from the union?

MR. MINA: Objection, your Honor.

MR. McINERNEY: I will withdraw it, your Honor; I will withdraw it.

THE COURT: All right.

MR. McINERNEY: I call for Exhibit 8 marked on Mr. Wall's deposition of April 9th.

THE COURT: All right, if someone has it. If they don't, if you have a copy of it --

MR. McINERNEY: I don't have it, your Honor. These are telephone records.

MR. MINA: Your Honor, this may take a minute.

THE COURT: We will wait.

(Pause.)

MR. McINERNEY: Your Honor, may we approach the side bar on this? I would like to shorten this. There are several telephone records --

MR. MINA: Your Honor, before we say anything, could we approach the side bar?

THE COURT: Yes.

(At the side bar.)

gtlk 22 Wall - Direct

MR. MINA: I am told it is June, July and August you are referring to.

MR. McINERNEY: I want the telephone call June 30, 1971, which was the eve of Morrissey's arrest, from the union hall to Boco Raton, Florida. That is number 6.

MR. MINA: All right. This is June, or part of it.

MR. McINERNEY: Your Honor, it would shorten this considerably. We have the three calls. If we could just get a stipulation that such calls were made from the union hall on June 30, 1971 and that there were further calls made on the day of the dismissal of all charges, which was July 20, 1971, and just that they were made from the union hall to Mr. Curran.

THE COURT: I see a toll call as part of the preliminary Exhibit 6 which is to Boco Raton, Florida on July 20, 1971 --

MR. McINERNEY: There were two of those, your Honor.

THE COURT: Incidentally, that was apparently at 11:34 a.m. in the morning, and was apparently a two-minute call.

What was the other date?

MR. McINERNEY: Another call the same date, your Honor, later on that day.

gtlk 23 Wall - Direct

THE COURT: Yes.

No, I have only one call to Boca Raton on July 20.

MR. McINERNEY: Your Honor, there are several different slips. That is the problem here, you see, your Honor.

THE COURT: I see. There are different telephone numbers.

THE COURT: Yes, there is another call to Boca Raton on that same day at 11:31 in the morning, which took three minutes.

So you had a call at 11:31 that took three minutes and then a call at 11:34, which is listed as having taken two minutes.

What else are you looking for?

MR. McINERNEY: The day before the arrest, which is June 30, 1971, your Honor.

THE COURT: I don't have that here.

(Pause.)

MR. McINERNEY: You don't have the slip?

THE COURT: I didn't have the slip for June 30.

MR. McINERNEY: Maybe we can get a stipulation. That is what I was seeking. If they will stipulate those three calls were made on those three days, that's all I need.

I can prove they are records kept in the regular

gtlk 24 Wall - Direct

course of business of the union, it is the regular course of business to keep such records and rather than have all this encumber the record and go through it with Mr. Wall, I would ask that Mr. Mina particularly -- I don't care about Mr. Bergadano's concession -- but if he will stipulate with me that those calls were made on those dates. That's all I need.

THE COURT: Do you have June 30?

MR. MINA: I am trying to find June 30.

Your Honor, just to make it easy --

MR. McINERNEY: He testified to it on the deposition.

MR. MINA: We will stipulate that phone calls were made from the union hall.

MR. McINERNEY: That's all I want.

MR. MINA: To Boca Raton.

MR. McINERNEY: That's all I want, to Mr. Curran's number.

The testimony is, "Is that Mr. Curran's telephone number? Does that refresh your recollection," and so forth.

THE COURT: Is there a stipulation there with three telephone calls from the National Maritime union hall to Mr. Curran's residence in Boca Raton, Florida, one call on June 30, 1971 and two calls on July 29, 1971?

That would be the total stiplation.

gtlk 25 Wall - Direct

MR. McINERNEY: That's all I want, your Honor.

MR. MINA: That is the total stipulation, your Honor.

But for purposes of the record and the jury, I want to make clear that it was from the union hall.

MR. McINERNEY: The union hall, yes.

MR. MINA: Not necessarily from any one specific person.

THE COURT: I thought that is what I said.

MR. McINERNEY: I am not trying to tie it to Mr. Wall.

THE COURT: It will be from the union hall.

MR. McINERNEY: From the union hall.

MR. BERGADANO: From the building, one of the telephones listed to the union.

THE COURT: That's right, one of the telephones listed for the union.

MR. BERGADANO: That's all it can be.

(In open court.)

THE COURT: Ladies and gentlemen, counsel have stipulated that on June 30, 1971 and again on July 20, 1971, a total of three telephone calls were made from the National Maritime Union telephone number in New York to the residence of Mr. Joseph Curran in Florida. There was one call made

from the National Maritime Union telephone number on June 30 and there were two telephone calls made on July 20 for a total of three telephone calls.

You may and should accept that stipulation as agreed.

There is no stipulation or agreement as to who made the particular calls. That is for you to consider in your deliberations and you may draw such inferences from the stipulation which we have here as are supported by the evidence in the case.

CONTINUED DIRECT EXAMINATION

BY MR. McINERNEY:

Q On July 1st, 1971, was James Morrissey a member of the National Maritime Union?

A Yes.

Q Did you suggest to anyone after hearing that Mr. Morrissey had been arrested in the N.M.U. hall that the charges be withdrawn against him?

A No, I did not.

Q When the charge of disorderly conduct was dismissed on July 13 against Mr. Morrissey, was that reported to you?

A Yes.

Q When did you receive such report?

A I don't recall.

Q Was it the same day or shortly thereafter?

A I would say either the same day or shortly thereafter, yes.

Q On July 20, 1971, the charge of criminal trespass against Mr. Morrissey was dismissed.

When did you receive word that such charge was dismissed?

A It would be about the same answer, either the same day or shortly following.

Q Were you present at the National Counsel meeting of the National Maritime Union of America on March 13, 1969?

A Yes.

Q Did you ever hear Mr. Curran say, "rather than give Mr. Morrissey space in The Pilot ---"

MR. MINA: Objection, your Honor. Objection, your Honor.

We are talking about what Mr. Curran said at a evening in 1969 at this point.

THE COURT: I am going to allow it.

This would relate only to Mr. Curran, I might suggest, and possibly to the National Maritime Union.

MR. McINERNEY: Yes, your Honor.

THE COURT: It is not being offered against anybody else.

MR. McINERNEY: No, sir, your Honor.

A I believe I testified in my deposition to that question that I had no recollection of the language used, but counsel minutes did reflect that he said it.

MR. McINERNEY: May I call on counsel for a copy of 13 marked on Mr. Wall's deposition. We don't seem to have a copy of it.

MR. BERGADANO: You are not calling on me, are you?

MR. McINERNEY: No. Anyone who has a copy.

MR. BERGADANO: We don't have a copy.

MR. MINA: Will you tell me what it is?

MR. McINERNEY: It is the minutes of the National Counsel meeting on March 13, 1969.

MR. MINA: Your Honor, we are going to have to look for it.

MR. McINERNEY: Those were among the documents I subpoenaed to the courtroom today.

THE COURT: They didn't say they didn't have them, they said they would have to look for them.

MR. McINERNEY: Can we deem it marked?

THE COURT: No, I will wait.

(Pause.)

MR. MINA: Your Honor, since the Court has already ruled on it, I think it would be just as easy to deem it marked at this point.

gtlk 29 Wall - Direct

THE COURT: All right. That will be Plaintiff's 22 deemed marked.

Those are the minutes of what meeting?

MR. McINERNEY: I will give it to your Honor in a minutes.

March 13, 1969, your Honor.

xx (Plaintiff's Exhibit number 22 was deemed marked for identification.)

THE COURT: If it is offered you are all familiar with it, is there an objection?

MR. MINA: Well, the objection that was made, your Honor, on relevancy, obviously.

THE COURT: Very well. Since I permitted him to answer questions on the subject, let the record reflect the objection is overruled.

xx (Plaintiff's Exhibit number 22 was deemed received in evidence.)

MR. McINERNEY: I have no further questions of Mr. Wall.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. MINA:

Q Mr. Wall, you were asked about three specific phone calls and they have been the three stipulated to to

Boca Raton, Florida.

To your knowledge, during June and July of 1971, were there also other phone calls made to Boca Raton other than the three we have talked about?

A Well, it's quite probable, but I have no --

Q When you say it was quite probable, in July of 1971, was Joseph Curran president of the National Maritime Union?

A Yes, he was.

Q And if there was a problem or a policy or any matter that had to be discussed, would Mr. Curran be called in Boca Raton?

A Yes, he would

Q Would you look --

THE COURT: If you want to refresh his recollection you best mark whatever you are going to show him for identification first.

MR. MINA: I am sorry. I thought they'd been marked.

THE COURT: I think they were marked at the deposition, but not yet at the trial.

This will be Defendant Union Exhibit A.

(Defendant Union Exhibit A was marked for identification.)

xx

gtlk 31 Wall - Direct

Q Mr. Wall, by looking at those, could you tell us whether or not, other than the three that have been stipulated to, there were other calls on other dates made to Boca Raton, Florida during June and July of 1971?

A July 19 and July 20, June the 18 -- there is another number in Boca Raton that I'm not familiar with.

The 25th and the 26th are the only ones that I can find.

THE COURT: What month?

THE WITNESS: July.

MR. McINERNEY: Your Honor, anything after July 20, I would submit, is not material or relevant and not admissible.

THE COURT: I think the witness has answered the question, basically, that there were other telephone calls to that number during the month of June and July.

MR. MINA: Your Honor, I apologize, but I would like to add these two sheets, which are also June and July, to this exhibit.

THE COURT: You may. You have not indicated how many slips were there.

You want to add them to that as well?

MR. MINA: Yes.

THE COURT: Do you want to change your answer at all?

THE WITNESS: It just indicates that there were other telephone calls.

THE COURT: To that Boca Raton number during June and July, 1971?

THE WITNESS: Yes, yes.

MR. MINA: At this time, your Honor, I would offer this into evidence.

MR. McINERNEY: I have no objection, your Honor.

THE COURT: Received.

xx (Defendant Union Exhibit A was received in evidence.)

THE COURT: You may proceed.

BY MR. MINA:

Q Mr. Wall, in regard to the three phone calls which Mr. McInerney referred to and in regard to any of the other phone calls to Boca Raton that we have marked, do you know who made any of those phone calls and for what purpose?

A No, I don't.

MR. MINA: I have no further questions, your Honor.

MR. BERGADANO: No questions, your Honor.

REDIRECT EXAMINATION

BY MR. McINERNEY:

Q Mr. Wall, do you know Mr. Curran's signature?

A Yes, I believe so.

MR. McINERNEY: Mark that for identification, please.

gtlk 33 Wall - Redirect

MR. MINA: Your Honor, is this --

THE COURT: I really isn't redirect because you did limit your cross-examination, but in the context of everything I am going to permit it.

MR. McINERNEY: Thank you, your Honor.

THE COURT: I do hope that since this is redirect, you wouldn't go too far afield for too long.

MR. McINERNEY: I anticipate no more than four questions.

xx (Plaintiff's Exhibit number 23 was marked for identification.)

MR. MINA: Your Honor, might I request that prior to any questions on the document we be made aware of what the document is?

MR. McINERNEY: I just want to ask one simple question, your Honor.

BY MR. McINERNEY:

Q Is that Mr. Curran's signature which appears on that document?

A Yes, I believe it is a copy of Mr. Curran's signature.

MR. McINERNEY: I offer it in evidence against Mr. Curran only.

THE COURT: Now show it to the other attorneys.

MR. McINERNEY: Yes, your Honor.

MR. MINA: Your Honor, we object to this. This has absolutely nothing to do with this lawsuit.

THE COURT: Let me see it.

(Handing to the Court.)

THE COURT: If you want to introduce a specimen of Mr. Curran's signature, that would be agreeable to the Court.

Let me look at the document here.

(Pause.)

THE COURT: Objection sustained.

MR. McINERNEY: I have nothing further for Mr. Wall, your Honor.

MR. MINA: Nothing further, your Honor.

MR. BERGADANO: No questions.

THE COURT: You may step down.

(Witness excused.)

MR. McINERNEY: The plaintiff calls Charles Snow by deposition.

THE COURT: You want to read from Mr. Snow's deposition?

MR. McINERNEY: Yes, your Honor.

THE COURT: Very well.

How long do you estimate this reading will take? I don't want to push you, but I just note the hour.

gtlk 35

MR. McINERNEY: Your Honor, it might be a good time to take a break just for the continuity.

THE COURT: That is why I asked you.

We are going to break a little earlier, ladies and gentlemen.

Ladies and gentlemen, we will take our luncheon recess at this time. Please do not discuss the case among yourselves or remain within the hearing of any other person who may be discussing the case. Keep an open mind on all facets of the case until it has been concluded.

The jury is excused for lunch and directed to return to resume hearing this case at 1:55 p.m.

We will assemble at that time. If we can start at that time, fine, but no later until that time, and we will continue until approximately 4:30, twenty to five, something like that.

(Luncheon recess.)

* * *

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AFTERNOON SESSION

April 16, 1975
2:10 p.m.

(In open court; jury present.)

MR. BERGADANO: Your Honor, I apologize for delaying the Court and for being late.

THE COURT: Let me just suggest to the jurors that I stayed with counsel for some time after you left so I guarantee you their lunch hour was shortened beyond your own and I certainly understand, Mr. Bergadano.

MR. BERGADANO: Thank you, sir.

THE COURT: At this point we will resume.

As I recall, just before we recessed for lunch we were about to start reading from the deposition of Mr. Snow, was it?

MR. McINERNEY: Your Honor, I was going to read from Mr. Snow's deposition, but I think I would rather read from Officer Tuciarone's deposition first.

THE COURT: I would assume that is a relatively short one.

MR. McINERNEY: Yes, your Honor.

THE COURT: Very well, let's start with that, then. Do you have a copy of the transcript?

MR. McINERNEY: No, your Honor. This is the one

gtlk 37 Tuciarone

I told you about.

THE COURT: If you don't have a copy, I will just listen along with the jury.

You may proceed.

MR. McINERNEY:

"Q What is your name?

"A Patrolman Gerald Tuciarone.

"Q Where do you live?

"A 2166 East 3rd Street, Brooklyn, New York.

"Q Officer, were you on duty on July 1st, 1971 in the 6th Precinct in the City of New York?

"A I was.

"Q When was your tour of duty?

"A Eight by four.

"Q Would you explain what that means?

"A Eight o'clock in the morning until four p.m. in the afternoon.

"Q Were you on foot or in a patrol car?

"A I was in a patrol car.

"Q Who was your partner?

"A Officer Forrie.

"Q Did there come a time during that tour of duty when you received a radio message concerning an incident in the N.M.U. Maritime Building on Seventh Avenue?

"A Yes.

"Q About what time of day was that?

"A Approximately 1310, 1:30, ten after one, approximately

"Q Ten after one in the afternoon?

"A Yes.

"Q Will you tell us, after you received that call, what you did?

"A We proceeded to the N.M.U. Building, 36 Seventh Avenue, walked in the door, was confronted by this complainant, James Nimmo, who told us that the defendant here was --

"Q Mr. Morrissey?

"A Mr. Morrissey was violating the law and he wanted him arrested.

"Q What did you say to Mr. Nimmo?

"A Mr. Nimmo I didn't say anything to.

"Q That is the complainant?

"A I said, "For what?" and he didn't seem to know and that was it.

"Q Then what did you do?

"A Well, as far as I can remember, we went up to the fourth floor, whatever it was, talked to the head security officer, who explained that they wanted Mr. Morrissey arrested because he was in the building unlawfully, he was told to leave and he didn't want to.

gtlk 39 Tuciarone

"Q Did you observe Morrissey passing out literature while you were there?

"A No, I can't recall that.

"Q Did you observe anyone passing out literature?

"A As I recall, no.

"Q Did anyone tell you what Mr. Morrissey was doing in the building that was unlawful?

"A No.

"Q Did you see Morrissey doing anything unlawful?

"A Did I? No."

Skipping to page 7, line 11.

"Q When the head of security told you that, that he wanted Morrissey arrested, what did you say?

"A I asked him -- I can't recall, I can't recall my words.

"Q Tell us in substance what you said.

"A I can't recall.

"Q Did you ask him what Morrissey was doing that he should be arrested?

"A I probably did.

"Q Just give us your best recollection of what was said by you to the head of security and by the head of security to you. It does not have to be the exact words.

"A I probably asked for what, what charge, and he

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said what we arrest him for, remaining in the building unlawfully."

Skipping to page 8, line 11.

"Q Who was present in the office when you were talking to the head of security?

"A I imagine my partner was definitely there, Mr. Nimmo and that's all I can recall.

"Q Was Mr. Morrissey there?

"A I don't remember.

"Q Was Mr. Nimmo present at all times when you were there with the head of security?

"A As I recall."

Skipping to page 9, line 13.

"Q After the head of security told you that he wanted Morrissey arrested, what did you do then?

"A I went -- we went downstairs.

"Q You say 'we'. Who is 'we'?

"A Mr. Nimmo and my partner is all I can remember.

"Q Where was Morrissey during all this time? Did Morrissey go to the office of the head of security with you?

"A I said I don't remember.

"Q You say 'we went downstairs." That is Nimmo, yourself and your partner?

"A I believe so.

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"Q Then what did you do?

"A We proceeded to place Mr. Morrissey under arrest on the complainant's charge of criminal trespass.

"Q Where did you do that?

"A I believe in the vestibule inside the N.M.U."

Skipping to page 11, line 16.

"Q You took him in the car, then, down to the precinct?

"A Yes.

"Q Did anyone else ride in the radio car?

"A No, sir. The complainant, I believe.

"Q When you arrived at the station house, tell us what happened then.

"A As I can recall, taken in front of the Detective Sergeant, told him the facts, taken into what we have, a clerical room and the arrest was processed.

"Q Did there come a time that you had any conversation with Morrissey?

"A I had conversation, of course, yes.

"Q When was that?

"A As we were processing the arrest.

"Q You never spoke to him previous to that time?

"A I spoke to him and advised him he was being placed under arrest for the charge.

"Q That was at the union hall?

"A Right.

"Q When you were processing him, did you have any conversation with him there?

"A As to what?

"Q Any kind.

"A Yes, answers and questions in the form, to the arrest form."

Skipping down to page 14, line 19.

"Q Did you appear in court on the return date of the charge?

"A Yes.

"Q What was the disposition?

"A It was dismissed.

"Q Did anyone tell you at any time that Morrissey had been disorderly?

"A As I recall, someone -- disorderly? No, not that I can recall, no.

"Q Did you observe anything that Morrissey was doing that was disorderly?

"A No.

"Q Did you oserve anything that Morrissey was doing that would warrant an arrest for disorderly conduct?"

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

MR. McINERNEY: Page 19, line 5.

"Q You say Mr. Morrissey was cooperative. You mean he didn't resist you?

"A Correct.

"Q You do not recall whether he said anything to you or your partner during that period, from the time you got to the union hall to the time you left the union hall?

"A Right, I can't remember.

"Q Again, you can not remember either way.

"A Yes.

"Q You do not recall, again, either way as to whether Mr. Morrissey was with you and your partner when you went up to the chief security office.

"A Correct.

"Q He may have been there and he may not have been.

"A Yes.

"Q What was the radio call that you received, if you remember, or if that piece of paper in front of you refreshes your recollection?

"A I believe it was a call to respond on a -- I believe -- which said disorderly maybe the usual terminology. I don't recall, no.

"Q Did you make any notation in your memo book?

"A I -- 10:10, responded to the scene, see what is,

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you know.

"Q See what is going on?

"A Yes.

"Q Do you know whether your partner, Officer Forrie, made any notations in his memo book?

"A I wouldn't know. He would not be required to.

"Q In other words, you were the --

"A Recorder.

"Q Recorder. You were the officer between the two of you, let us say, that day you were the chief of the team rather than him.

"A I'm the recorder. At one time, for four hours, and he's the recorder the next time.

"Q During that period of time, you were the recorder?

"A As I remember."

Skipping down to page 23, line 14.

"Q By the way, is this your handwriting?

"A Yes, it is.

"Q Under details and where it says --

"A You don't want me to read?

"Q Translate the first 'A/C'

"A Arrest and charged.

"Q By whom?

"A The complainant, special guard at the time and place

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of occurrence, defendant did refuse to leave premises when told to, remained unlawfully.

"Q Remained unlawfully, what did that mean when you wrote it down? What did it mean to you, that he refused to leave?

"A Right.

"Q That he had been --

"A His presence was not wanted there, he was there.

"Q Does that indicate to you or does that mean to you that he was told more than once to leave and refused to leave?

"A I do not know."

Skipping to page 27, line 7.

I will skip that one.

Go to page 28, line 6.

"Q Do you recall whom you spoke to when you went to that person's office?"

May I have a concession that we are referring to the head of security's office there?

MR. MINA: Yes.

MR. McINERNEY:

"A No. It was the head of security.

"Q That is all you were told?

"A Yes.

"Q You do not remember his name?

"A No.

"Q You do not remember what floor he was on exactly, you think it might have been the fourth floor, but it could have been the third or fifth or something else?

"A Right.

"Q Do you recall what the conversation was at the office of the chief security officer?

"A As I recall that I wanted to know the reason why this man was to be placed under arrest.

"Q Is that where you got the information that he had been told to leave and refused to do so?

"A. Yes."

Skipping to page 29, line 3.

"Q To the best of your recollection, did he remain inside the building until the time that you arrested him and placed him in the police car?

"A I couldn't tell you. I don't know.

"Q When you came to the union hall, was he there in the vestibule?

"A As I came to the union hall, I would not know him until afterwards. If he was outside at the time, I wouldn't know.

"Q Was he pointed out to you by Mr. Nimmo when you came in?

"A Yes, I think so.

"Q Were you inside the door?

"A Yes.

"Q When you arrested him, you were still inside the door?

"A Yes.

"Q When Mr. Nimmo pointed Mr. Morrissey out to you, what did he say, if you remember?

"A I can t recall.

"Q Did Nimmo tell you that Morrissey was unlawfully in the building?

"A Yes."

MR. MINA: Wait.

Your Honor.

MR. McINERNEY: I am sorry, skipping to page 30, line 4.

"Q Did he at any time tell you why he claimed he was unlawfully in the building?

"A I can not recall."

Skipping to line 16.

"Q Did you tell the head of security in words or substance that you did not want to make any such arrest?

"A I told the head of security I wanted to know why the person was being arrested."

Skipping to Page 31, the last line, line 25.

"Q Did the head of security tell you in words or substance that Mr. Morrissey was unlawfully in the building?

"A Yes.

"Q Did you ask him why he claimed he was unlawfully in the building?"

MR. MINA: Objection.

THE COURT: Let me hear the question again.

MR. McINERNEY: "Did you ask him why he claimed he was unlawfully in the building?"

THE COURT: Let me see the transcript.

(Handing to the Court.)

THE COURT: I will allow the answer. I don't see that there is very much there one way or the other and let us not have the jury guessing.

MR. MINA: All right, your Honor. I will withdraw the objection.

MR. McINERNEY: The answer is, "As I can recall, I probably did."

"Q Do you recall what the head of security said?

"A Not to my knowledge, no."

Skipping to page 33, line 5.

"Q While you were talking to the district attorney, was there anyone else present?

"A I believe the complainant."

Skipping to number ten and eleven.

"Q Was there another person there with the complainant?

"A I can't recall.

"Q Was anything said by the complainant to the district attorney in your presence?

"A I can't recall.

"Q When was that meeting held?

"A The same day as the return date.

"Q The same day as the return date.

"Did you have any other meetings with the district attorney previous to the return date?

"A No."

Skipping to page 35, line 11.

"Q Again, do you recall their using the words unlawfully in the building rather than telling you what it was all about?

"A I believe unlawfully in the building.

"Q To the best of your recollect?

"A To the best of my recollection, it would be unlawfully in the building. This way I would know that."

Skipping to page 36, line 11.

"Q Mr. Nimmo was the one who made the complaint to you initially, right?

"A Right.

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"Q Is it standard procedure to go further than the one who makes the complaint?"

MR. MINA: Objection.

THE COURT: Sustained.

MR. McINERNEY: Go to 18.

"Q Were you asked that you should make an arrest on what Mr. Nimmo told you downstairs?

"A I can't -- ask me the question again.

"(Record read.)

"A No, not downstairs."

Skipping to page 37, line 3.

"Q At this point, is it normal procedure to either leave and go about your business or is it normal procedure to go further and go up to the head of security, for example, in the building?"

MR. MINA: Objection, Your Honor.

THE COURT: Sustained.

MR. McINERNEY: Your Honor, I ask your Honor to look at the transcript and may we read the next question?

THE COURT: Well, I don't have the transcript. That's what you didn't give me.

All right, let me have it.

What line are you speaking about?

MR. McINERNEY: Line 11, your Honor.

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THE COURT: The question on line 11, objection sustained.

MR. McINERNEY: Your Honor, line 16, may I begin there?

THE COURT: You may.

What is your stipulation in connection with this deposition on objections to form?

MR. McINERNEY: The only objections that were not reserved was the form, your Honor.

MR. BERGADANO: They were made at the time, your Honor, as your Honor will note.

MR. McINERNEY: Objections as to form were to be made.

THE COURT: Let me say this, I sustained a previous objection on the ground that it was in an improper form on the use of the word "persist" and since that objection was not made at the time and, therefore, is not reserved for trial, I am going to permit you to read the question that you had asked to read a moment or two ago.

MR. MINA: Your Honor, may I just point out to the Court that the objection was made at that time. It just seems the answer must have been taken down right before the objection.

THE COURT: I am sorry, they have it blacked out

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here and I can't see.

I see.

MR. BERGADANO: Your Honor, the objection was made at the time.

THE COURT: I beg your pardon, gentlemen. I see it here.

The objection is sustained. I will adhere to my schedule.

I think for the reading purpose of this witness, this matter has been X'd out. I did not see it, unfortunately.

MR. McINERNEY: I did not see it on mine, either.

THE COURT: The objection was made. I deem it improper. I will sustain the objection.

MR. McINERNEY:

"Q Do you recall whether or not the complainant Nimmo telephoned upstairs before you went up?

"A I can not recall."

Skipping to page 38, line 5.

"Q Did he tell you that he had been downstairs and observed Mr. Morrissey doing anything unlawful?

"A No, I can't recall.

"Q Was it the head of security that insisted on the arrest being made?"

MR. MINA: Objection.

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THE COURT: Could I see the transcript?

MR. MINA: Yes, your Honor.

MR. McINERNEY: There was an objection there.

THE COURT: It was?

What line are we on?

MR. McINERNEY: Line 10, your Honor.

THE COURT: Just one moment.

(Pause.)

THE COURT: Sustained.

MR. McINERNEY: I suppose the same ruling would apply to 14?

THE COURT: Yes. Sustained, again.

MR. McINERNEY: On page 23, I don't believe I read these. Page 23, line 20.

I will go back one, your Honor. This is a repetition, your Honor, but on one question.

"Q Translate the first 'A/C'.

"A Arrested and charged.

"Q By whom?

"A The complainant, special guard. At time and place of occurrence, defendant did refuse to leave premises when told to, remain unlawful.

"Q Remained unlawful, what did that mean when you wrote it down? What did it mean to you, that he refused to

leave?

"A Right."

Skipping to page 25, line 3.

"Q When you say arrested by the complainant, you mean that the complainant made a civil arrest?

"A I thought the arrest was made by --"

This is page 25, line 3.

The answer is, "Arrested and charged by the complainant. Yes, I assist in the arrest."

"Q I thought the arrest was made by -- I thought you said you arrested Mr. Morrissey when you went back downstairs.

"A I tell him he's under arrest. I assist the complainant."

MR. MINA: Your Honor, may I be permitted to continue with a few portions of the Patrolman Tuciarone at this time?

THE COURT: If Mr. McInerney has finished.

He indicates that he has.

MR. MINA: At this time, your Honor, I would refer to page 25 and reread the last question and answer that was read by Mr. McInerney.

"Q I thought the arrest was made by -- I thought you said you arrested Mr. Morrissey when you went back downstairs.

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"A I tell him he's under arrest. I assist the complainant.

"Q In other words, the complainant made the complaint and you, as the New York City Police Officer, then followed through and make the legal arrest?

"A Legal arrest."

One page 32, line 24.

"Q How long was Morrissey detained at the precinct?

"A I would say no more than -- to complete all the information, half hour, 45 minutes. He was processed as soon as the questions came and he answered them."

Page 21, line 5.

"Q Do you recall who specified the charge that is listed on the piece of paper?

"A The --

"Q 'P.L., Penal Law, 104.05, criminal trespass third'

"A That would come from the penal law at the station house?

"Q In other words, someone at the station house would determine or the determination which specific charge it would be.

"A Right.

"Q It was not told you by Mr. Nimmo?

"A No.

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"Q It was not told you by the chief security officer?

"A Not that I can recall.

"Q In other words, that specific charge was a determination made by the New York City Police Department based on the facts."

The answer is on page 22, line 2, "Based on the facts from the complainant.

"Q But specific charge is determined by the New York City Police Department and was at that time?

"A The caption of the charge?

"Q This part (indicating).

"A Yes."

Page 23, line 9.

"Q Was this specific language under this section of the penal law that is written down in this box where it says 'charges and specific offenses,' was that determined by a member of the New York City Police Department?

"A Yes."

That's all, your Honor.

THE COURT: Does anyone want to read anything else from this deposition?

MR. BERGADANO: No, your Honor.

Thank you.

THE COURT: Very well, You may proceed, Mr.

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McInerney.

MR. McINERNEY: Your Honor, before reading Mr. Snow's deposition into evidence, I would like to read from a request for producing copying pursuant to Rule 34.

MR. MINA: Your Honor, at this time I think --

MR. McINERNEY: Unless I can have a stipulation, your Honor.

MR. MINA: A side bar discussion?

THE COURT: Step to the side bar.

(At the side bar.)

THE COURT: You may proceed.

MR. MINA: I would like to note what we are talking about first, if I may.

THE COURT: Mr. McInerney.

MR. McINERNEY: I would just like to read this one question. I asked him to produce certain records or my predecessor asked him to produce certain records pertaining to, and I will read the question, all National Maritime Union, here and in N.M.U. records, relating to the membership of James M. Morrissey in the N.M.U., including, but not limited, to the following:

A. Personal files.

B. Dues records.

C. Records reflecting participation in the

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'Fighting Fund'.

Records and reports reflecting performance of duties as a member of and as an elected or appointed official of the N.M.U.

E. Records reflecting any disciplinary proceedings taken against James M. Morrissey as a member of and as an elected or appointed official of the N.M.U.

F. Strike record."

Your Honor, the response to that -- I can read the whole thing, but if we had a stipulation on it -- is five sheets and nothing else.

There is a lot of colloguy in here and everything else.

Do you want to go through it?

MR. MINA: At this point, your Honor, we have discovery and inspection, at which time a large volume of documents were produced and marked.

MR. McINERNEY: Just this one question, I am not talking about the other questions and answers, just this one question.

MR. MINA: What is the question?

MR. McINERNEY: I just read it. Here it is.

MR. BERGADANO: Your Honor, I was present. They produced a couple of suitcases full of stuff.

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His predecessor, Mr. Donnelly was present, he was asked what he wanted copies of. My recollection is we went back later, Mr. Donnelly went through all those records and he used those of which he wanted copies and copies were made by Mr. D'Onofrio's office and delivered, your Honor.

MR. MINA: I was not trial counsel at that time. I got the case some time later.

MR. BERGADANO: I was there at the time.

They were made and delivered by Mr. D'Onofrio's office to Mr. McInerney's predecessor and he has them all. I don't know what this is all about.

MR. McINERNEY: I am just trying to explain it, Mr. Bergadano.

The answer to that one question is five sheets.

If you want to read the transcript, there it is.

MR. MINA: What is five sheets?

MR. McINERNEY: I will show you the five sheets. They are innocuous. I will show you what they are rather than characterize them.

(Pause.)

MR. McINERNEY: Well, these were five separate sheets produced, but when they were reproduced only one exhibit number shows on it. But if they have the originals or from what Mr. Donnelly copied from, that's all I have.

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Do you want to see them (handing)?

MR. MINA: I would point out to the Court that pursuant to a request from Mr. McInerney's office, after the deposition of Mr. Snow, at which time he indicated they had a security file on Mr. Morrissey, we have, as of last week, supplied Mr. McInerney with Mr. Snow's security file, also.

MR. McINERNEY: Your Honor, that is precisely the point of this now.

During the entire discovery proceeding I asked them -- Mr. Donnelly asked them to produce all the records. That was all that was produced.

The second section of the Mr. Snow's deposition he said he maintained a security file on Morrissey, which was not produced.

MR. MINA: Which has certainly been given to Mr. McInerney.

MR. McINERNEY: That is offered to show what was produced and later on in the deposition what was subsequently produced.

MR. MINA: Your Honor, might I make a point and a distinction:

What was asked for on the first notice, it seems -- as I say, I was not in the case at that time and I don't even have a copy of that -- what was the National Maritime Union's

records on anybody --

THE COURT: Let me put it this way:

That is a rather fine distinction, if I do say so.

MR. MINA: That is true.

THE COURT: If he wanted to make a pretrial motion of any kind or nature or description, fine.

If he wanted to ask for a trial continuance based on the very recent arrival of records which he asked for some time previously, he could have done that.

There is no application that I can think of that you could make at this time within the ambit of Rule 34, which is what brought us to the side bar. That is a pretrial discover rule and it has certain provisions procedurally within Sub Part (b) of the rule, and under the circumstance I just do not see the efficacy for your present application and, therefore, I would suggest that you have a choice now:

If you wish to offer all of the material you got from the union and put it in evidence in this case and if it is properly offered and relevant and material, we will take it.

If you want to put in a portion of it and they then want to put in the remaining portion so that there will be completeness, that can be done, where appropriate.

But I do not see this application as falling within

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any portion of Rule 34.

MR. McINERNEY: All right, your Honor.

May I ask this:

May I ask Mr. Mina's representation that the file that was supplied to me was a complete file of the security file on Morrissey.

If you have the original with you, I would like to have the original of it when we read Mr. Snow's deposition, and I want the complete file you kept on Morrissey.

MR. MINA: We certainly will make a representation because that is what we were asked to produce and it is the complete file.

MR. McINERNEY: If it is the complete file, I am satisfied.

THE COURT: Very well.

MR. BERGADANO: It is complete as to the ability of being complete, as Mr. Snow pointed out.

For the time he had his heart attack, the records were moved for several times and when he came back he couldn't find his own records. He was out and he had open-heart surgery and he was out for a considerable period of time and he couldn't find his own files.

To the extent that they could be found, Mr. Sovel made a diligent search on behalf of the union to get everything

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that was in that file that was available.

MR. McINERNEY: Let me have this, then.

May I have at least the representation that everything Mr. Snow testified about at his deposition is in that file.

MR. MINA: No.

MR. BERGADANO: No, because we don't know and neither do you.

MR. McINERNEY: I may have my idea about it.

MR. BERGADANO: Yes, you have lots of ideas. That is not going to help us.

THE COURT: I think the subject at the side bar having been concluded, I can only suggest that there is nothing within the rules.

You have representations made by both counsel.

MR. McINERNEY: I withdraw the offer. I withdraw the offer.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you, your Honor.

(In open court.)

MR. McINERNEY: Beginning with the Snow deposition --

MR. MINA: Your Honor, may I have a second to give the Court a copy?

THE COURT: I appreciate it.

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(Handing to the Court.)

THE COURT: I have it in front of me now.

MR. McINERNEY: Page 4.

"Q What is your name?

"A Charles Snow.

"Q Where do you reside?

"A 63-84 Saunders Street, Rego Park, Queens."

Skipping to page 5, line 8.

"Q What was your occupation on July 1, 1971?

"A I was security director for the N.M.U., along with many -- a couple of other responsibilities that I carried.

"Q Have you been so employed since January 1969?

"A Yes.

"Q How long did that employment continue? Is it continuing to the present time?

"A Yes. I am on sick leave.

"Q When did you go on sick leave?

"A The exact date that I went into the Methodist Hospital for my annual examination was December 9, 1973. Since then.

"Q In January of 1969, were you a participant in the Officers' Pension Plan?"

The answer is on --

MR. MINA: Objection, your Honor.

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THE COURT: Sustained.

MR. McINERNEY: Page 6, line 22.

"Q Were you ever a participant in the N.M.U.'s Officers' Pension Plan?"

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

MR. McINERNEY: Your Honor, on this, again, the objections are not as to form were not interposed here.

MR. MINA: This is relevancy, your Honor.

THE COURT: Yes. I don't see the relevancy.

MR. McINERNEY: May I be heard on that, your Honor? If your Honor would look at page 7, it might become apparent.

THE COURT: I am going to allow it.

There is an issue in this case which I think permits it.

MR. MINA: Your Honor, again, I would refer to a point that I think was made previously regarding this same subject matter, and that is the final decision on this was not filed by Judge Bonsal until 1972.

THE COURT: Let me just ask one question:

Was the action to which reference is made here pending on July 1, 1972?

MR. MINA: Yes, your Honor.

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We have a copy of the judgment.

THE COURT: I will allow it, then.

MR. McINERNEY: On this issue, your Honor, it has been determined. On this issue it has been determined by this Court --

THE COURT: I don't want to know anything about anything about determination.

MR. BERGADANO: Your Honor, there is further testimony in this transcript by this witness that he was not aware of this subject matter or that it affected him subsequently.

THE COURT: You can read that.

In other words, I am going to permit either of you gentlemen to read the fact that he didn't know anything about this situation. Then it is up to the jury.

All right. You can begin, then, on line 15 or may prefer to begin on line 22, page 6.

MR. McINERNEY: I will begin on line 15, your Honor.

"Q You don't know whether you were a participant in the Officers' Pension Plan? I am asking you, you do not know whether or not you were?

"A At that time I don't know.

"Q Were you ever a participant in the N.M.U's Officers'

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Pension Plan?

"A Yes.

"Q Had you ever been elected to office in N.M.U.?

"A No.

"Q Were you an officer of the N.M.U.?

"A No.

"Do you mean an elected official?

"Q Yes.

"A No.

"Q Were you an officer?

"A Not in the true sense of the word, no. I -- I'm not a member.

"Q Did you know that Morrissey brought an action in the Federal Court to eliminate from the Officers' Pension Plan persons who were not officers?

"A Yes, I know that. I know that. It affected me.

"Q When did you first become aware of that?

"A I don't remember the exact date on that, either.

"Q Give me your best approximation.

"A Four, five years. I don't know."

MR. MINA: Your Honor, may we point out at this time, since it has not been pointed out and that answer has come up, that this examination was taken in April of 1974.

THE COURT: Yes, I think that is a valid point.

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Ladies and gentlemen, I think the Court and you can take judical notice of the fact that the particular deposition was conducted on April 8th, 1974.

Is that correct, gentlemen?

MR. McINERNEY: Yes, your Honor.

MR. BERGADANO: Yes, your Honor.

MR. McINERNEY:

"Q The district court decision was May 23, 1969, which eliminated persons from that plan who were not officers.

"Does that refresh your recollection, Mr. Snow?"

MR. MINA: Objection. I object to that question.

THE COURT: Let him read the answer. He has already gotten the question before the jury and I think the answer will dispose of this as something which is evidence at this point.

MR. McINERNEY:

"A No.

"Q You said 'affected you'. You knew you were one of the persons who had been eliminated from the plan; is that right?

"A I found that out.

"Q You don't remember when you found that out.

"A I don't remember the exact month."

Skipping to line 23 on page 8.

"Q Prior to taking a position with the N.M.U., were you employed by the City of New York?

"A Yes.

"Q Were you employed by the New York City Police Department?

"A Yes.

"Q In what capacity were you so employed?

"A I retired as a lieutenant in the Police Department."

Skipping down to page 13, line 8.

"Q On July 1, 1971, would you describe your office on date July 1 at the N.M.U.?

"A The security office is located on the fifth floor -- was located on the fifth floor of 36 Seventh Avenue and it was adjacent to the cashier, cashier's booth of the book-keeping department. I was, say, in the northwest or, rather--thinking of the building itself, the southeast corner of the building from the interior. It was made up of two rooms, one large room, where I had a section desk and a couch for visitors, and my own little small cubbyhole office with a desk in it and chairs."

Skipping to page 15, line 15:

"Q Were you in your office on July 1, 1971?

"A I couldn't remember that.

"Q To refresh your recollection, that was the day that

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Mr. Morrissey was arrested.

"A I was in my office on that day.

"Q Did there come a time when you received a telephone call from the master-at-arms called Nimmo?

"A Yes.

"Q What time did he call?

"A It had to be midmorning or early morning.

"Q What did he say to you and what did you say to him?

"A He told me that someone was handing out literature again, and I told him to do what he was supposed to do, tell him to move outside the door.

"Then I asked him who it was, and he said it's Jimmy Morrissey.

"Q After that, was there anything else said in that conversation?

"A Just tell him that to look at the notice on the board, there was a notice put out by the National Office stating no one was supposed to hand out literature other than official literature of the N.M.U. in that hiring hall or in that building at any time.

"I told Jimmy Nimmo to refer Morrissey to that thing and ask him to move outside the building, not to use any force.

"Q Was there anything further said? What did Nimmo say?

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"A He said, 'All right, I'll tell him, but it doesn't look like he's going to move'.

"Q Did you receive any further communications from Nimmo on that day?

"A Yes. He called me about two or three times in relation to this same problem, this same proposition, this same dilemma that he was in, 'What am I going to do?'

"Q Did you ask Nimmo whether Morrissey was alone?

"A No.

"Q Did you ask Nimmo if there was anyone else passing out literature besides Morrissey?

"A No.

"Q Nimmo didn't tell you there was anyone else?"

MR. MINA: Objection, your Honor.

MR. McINERNEY: I will withdraw it, your Honor.

THE COURT: Very well.

MR. McINERNEY:

"Q Then what happened next after Nimmo made these several telephone calls to you?

"A I asked him to talk to him at the door and asked him why he persisted in staying when before he had done usually what we had asked him to do and as some others had done for us when we asked them to do.

"There were many people at many, many different times

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that did the same thing and were asked to do the same thing and they did it.

"Q When you say 'did the same thing', you mean they passed out literature and then you asked them not to pass out literature in the hall and they stopped? Is that what you mean?

"A Yes.

"Q Just to make it clear for the record.

"A But usually most of the time it usually wound up with a half argument, half display of temperment, as I don't know whether you know or Jimmy knows, we get a lot of drunks in that hall and a lot of the guys who are apt to start fights as easily as not. I found that to be the best means of avoiding problems like this.

"One of my main responsibilities was to keep the peace and keep order in that hiring hall.

"Q Was Morrissey one of those that was drunk in the hall?

"A Never.

"Q Was Morrissey one of those who was inclined to start fights in the hall?"

The answer is on page 19, line 22.

"A Morrissey never provoked fights, but he won't back off from it, I must say that, Jimmy."

MR. MINA: Will the reading refer to the fact that it says "the witness"?

THE COURT: Yes.

MR. McINERNEY:

"THE WITNESS: I must say that, Jimmy."

MR. MINNA: May the record reflect that James Morrissey was present to explain the Jimmy.

THE COURT: Basically, the witness is turning to Mr. Morrissey and his answer, "I must say that, Jimmy."

MR. MINA: Yes, your Honor. Thank you.

MR. McINERNEY:

"Q Did there come a time when you found that Mr. Nimmo could not convince Morrissey that he should stop passing out literature in the hall?

"A Yes.

"Q About what time of day was that?

"A It was probably an hour, an hour-and-a-half afterwards.

"Q Did you give Nimmo certain instructions then?

"A Yes.

"Q What did you tell Nimmo to do?

"A I told him to inform Jim that he was in violation of the Penal Code, that there was a law called Criminal trespass and they had recently changed the Penal Law from

disorderly conduct to harassment, I believe it was, where keeping a peace was -- if you did not keep the peace it would be considered a violation of law, and if he didn't stop he would just -- he would just liable to get locked up for it.

"Q Did you have any further communications from Nimmo after you gave Nimmo those instructions?

"A Yes. I told him that and he said he won't stop anyway.

"Q Then what happened?

"A He told Nimmo to do what he wanted, what he wanted to do."

Skipping down to the last line on the page.

"Q Then what did you do?

"A I called Nimmo and I told him that, asked him one more time, and if he refused, get the cops and we lock him up.

"Q About what time of the day was that?

"A It had to be lunch time, noon, one o'clock.

"Q Did you have another communication with Nimmo that day after that?

"A Yes.

"Q When was that?

"A After the police arrived they all came up to my office.

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"Q When you say 'they all'--

"A The two police officers, Nimmo and Morrissey.

"Q At that time who else was present in your office?

"A I couldn't recall.

"Q Was your secretary there?

"A She might have been out for lunch."

Skipping to line 7, page 23.

"Q Was Mr. Nesbitt there?

"A No. There were others there. Passers-by, people.

"Q Do you remember who they were?

"A No. The only important people around were Jimmy and Nimmo and the two cops and myself."

Skipping to page 24, line 9.

"Q You remember that," referring to the motion, "distinctly?

"A I remember him saying, doing that. I remember the cops wanted to know who the complainant was going to be, what was the whole bit about, was there a strike on. They didn't know what it was all about.

"I explained it in full detail to the police officer.

"Q You explained it in full detail to the police officer?

"A Yes.

"Q You told them about the Penal Law, about the Criminal

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trespass.

"A He asked, 'What charge do you want to mark up on him?'

"I said, 'Well, if he refuses', and they asked him to go outside, too, and he still said, 'No, I'm going to stay down in the hall and I'm going to stay down in my hall and I'm going to give out my literature, it's my union.' He refused to go out of the building and the cops told him, 'If you refuse, this man wants you locked up, you are going to be the complainant, you are going to be locked up. Do you want that?'

"'Lock me up.'"

MR. BERGADANO: I am sorry.

MR. McINERNLY:

"Q You say the Police --"

THE COURT: Wait a minute. I think we have an objection.

MR. BERGANDANO: It is not an objection; there is an omission.

MR. McINERNEY: "Lock me up (indicating)"

MR. MINA: And it is in quotes.

MR. BERGADANO: It is in quotes as being Mr. Morrissey's answer.

THE COURT: It is a quote of what Mr. Morrissey is

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alleged to have said at the time.

MR. MINA: Yes, your Honor.

THE COURT: Let's read that again.

MR. McINERNEY:

"Q You told them about the Penal Law, about the Criminal trespass?

"A He asked, 'What charge do you want to mark up on him?'

"I said, 'Well, if he refuses,' and they asked him to go outside, too, and he still said, 'No, I'm going to stay down in my hall and I'm going to give out my literature, it's my union.' He refused to go out of the building and the cops told him 'If you refuse, this man wants you locked up, you are going to be the complainant, you are going to be locked up. Do you want that?'

"'Lock me up' (indicating).

"Q You say the Police told Morrissey 'this man'. When they said 'this man', were they referring to you, Mr. Snow?

"A Yes."

Page 26, line 4. The answer to that question appears on page 28, line 21 and 22.

"Q Did anyone tell you that a short time previous to July 1, 1971 MOrrissey had been passing out literature in the

hall?

"A Nobody had to tell me, I knew it.

"Q In spite of the fact that you knew it, Mr. Snow, did anyone tell you?

"A The master-at-arms.

"Q I am not talking about July 1, 1971; I am talking about previous to July 1, 1971.

"Did anybody tell you Morrissey had been passing out literature in the hall?

"A The only one who told me previous was the master-at-arms.

"Q On July 1, 1971?

"A All the time.

"Q All the time.

"Did anyone tell you that Morrissey on a previous occasion previous to July 1, 1971 had refused to stop passing out literature when asked?

"A I really don't remember.

"Q Do you know James Morrissey?

"A Very well.

"Q Did the marshal office ask you to do an investigation on James Morrissey?

"A A long time ago."

Skipping to page 30, line 1.

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"Q Did you know that Morrissey was one of the dissidents in the union?"

MR. MINA: Objection.

THE COURT: Sustained.

MR. McINERNEY:

"Q Do you know Joseph Curran?

"A Yes."

Page 31, line 10.

"Q How frequently in that period, January 1, 1969 to July 1, 1971, did you speak to Joseph Curran?

"A I would have to say infrequently.

"Q Can you give us your best estimation of what you mean by that? Once a month, once a week, once every two weeks? Give us your best approximation.

"A Some days I spoke to him five times; some times months went by, weeks went by when I didn't speak to him. When I had a reason to see him, I saw him.

"Q Did you have any reason to see Mr. Curran immediately prior to July 1, 1971?

"A Was that the date you were locked up?"

I guess he was speaking to Jimmy there.

"Q That's right.

"A I don't remember that.

"Q Did you have any conversation with Mr. Curran

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relative to Mr. Morrissey just prior to July 1, 1971?

"A I wouldn't say just prior.

"Q When? A week, two weeks, three weeks?

"A Morrissey has been discussed often with Mr. Curran and with others. Morrissey has been discussed by everyone -- everybody often.

"Q At the union?

"A (Witness nodded his head.)

"Q When, prior to July 1, 1971, is your best approximation did you talk to Mr. Curran about Mr. Morrissey?

"A I wouldn't remember that.

"Q Was it a matter of weeks or months?

"A I don't remember"

Continuing on line 25.

"A I really wouldn't.

"Q But in any event, you did speak to Curran about Morrissey?

"A Yes.

"Q What was said by Mr. Curran and by you, to the best of your recollecti[illegible]?

"A Generally speaking, the conversations had to do with his handing out literature in the hall and the usual argument that ensued and it was a problem to me security-wise.

"Q Let's go back to July 1, 1971.

"After Morrissey put his hands out in the form you described, can you remember anything else that was said by you to the policemen?

"A I said to Nimmo, 'If you need a complainant, you will be the complainant officially.'

"Q Did you tell that to both policemen or to one policeman?

"A They were both there.

"Q Were they in the inner office or outer office when you said that to them?

"A Outer office."

Skipping to page 34, line 20.

"Q Did you show him," referring to the police officer, "any papers or did you show him any books or did you show him anything about the law of criminal trespass?

"A I don't know if I had a copy of the bulletin that was pasted on the wall where everybody could see it in the hiring hall and throughout the building or I might have had the section on trespass and harassment typed out on a piece of paper because this matter had been discussed, not because only of Morrissey."

Skipping down to line 15.

"Q But you had that section typed out, is that right?

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"A I think I had. I'm not certain."

Skipping to page 37.

"Q Previous to the time Morrissey was arrested which you had the paper typed up or when it was typed up or when it was handed to you, did you have any conversation with anybody then?

"A I don't remember.

"Q You recollect what type of paper that section was typed on? Was it legal paper, was it regular paper?

"A I don't actually recollect the paper, but I'm trying to presume that in important things I have to do, I either type up or write up the exact wording on statements of fact, quote from a book like the Penal Law. I might have typed this on a three by five card, which is usually my habit, just for my own pocket to refer to. I might have. I'm not even sure that I had one of them, honestly.

"Q But was it your practice to type out things like this?

"A It's a habit.

"Q It was a habit. All right. But you have no recollection of whether or not you showed any such thing to the police officer?

"A That's right."

MR. BERGADA: The witness nodded his head no.

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MR. McINERNEY: The witness nodded yes.

MR. BERGADANO: No.

MR. McINERNEY: The witness nodding no.

I apologize, your Honor.

Page 37, line 17.

"Q Between the year 1969 and the time Mr. Morrissey was arrested, several people passed out literature in the union hall, did they not?

"A Yes.

"Q In that connection, did you do any investigation into the criminal law to find out what would happen if they refused to stop passing out literature between 1969 and the time Morrissey was arrested?

"A Yes.

"Q What did you find? Did you find there was a statute on it that said there was criminal trespass?

"A Yes.

"Q Approximately when was that, Mr. Snow? Between 1969 and 1971; is that right?

"A It was long before '69 when I knew this.

"Q When you knew it, but I am talking about looking up the statute.

"A That I looked it up and knew it.

"Q For the wording?

"A Just to review it in my mind. I know what trespass is.

"Q You reviewed the statute to get the current language on it, is that right?

"A Yes, and also the current language on harassment.

"Q Can you give me your best recollection of approximately when you did that?

"A I remember thinking of the opposition passing out [illegible]rature like this in the hall on many, many occasions when it caused near fistfights and in some cases some punches.

"There was also a source of trouble and a problem to me as a security officer in trying to keep these guys from each other and I think that I looked at the Penal Law regarding harassment when the law was changed, when the title this time became harassment. I don't remember when that happened. I read very, very carefully so I could understand it and apply it if I ever thought it was necessary and gave advice on it if I thought it was necessary.

"Q Was it at that same time you looked at the law concerning criminal trespass?

"A Yes, and I had looked it up before.

"Q You are not a lawyer, are you, Mr. Snow?

"A No."

The bottom of page 44 and the answer is on top of

page 45, line 6.

"Q Did you ever have any discussion with anyone after the date Morrissey was arrested concerning Morrissey's arrest?

"A Yes.

Skipping to page 52, line 22.

"Q Did you have any conversations with Mr. Nimmo?

"A I did.

"Q On how many occasions did you have conversations with Mr. Nimmo?

"A Several regarding his court appearance and what happened each time that he went to court.

"Q Did you make any reports to Mr. Wall concerning the progress of this case?

"A I don't remember specifically."

Page 54, line 9.

"Q In your conversations with Mr, Nimmo, tell us to the best of your ability what you said to Mr. Nimmo and what he said to you.

"A I just asked him generally what happened in court and he told me.

"Q On how many occasions did you do that; do you recall?

"A Each time he had to make an appearance."

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Skipping to page 56, line 5.

"Q Aside from Mr. Morrissey, was there anyone ever arrested in your office at the N.M.U.?"

MR. MINA: Objection.

THE COURT: Sustained.

MR. McINERNEY: Skipping to line 24.

"Q Did you know that Morrissey was in opposition to the Curran and Wall slate in 1969?

"A Yes.

"Q During the period January 1, 1969 to the time of Mr. Morrissey's arrest on July 1, 1971, did you read The Pilot?

"A Yes.

"Q During that time, did you see reference to Morrissey in The Pilot?

"A I don't remember."

Skipping to page 63, line 4.

"Q You say you knew some people carried knives. Was Morrissey among that group?

"A No, I don't know that he was.

"Q You said they carried other things. Do you mean guns?

"A Yes.

"Q Was Morrissey among that group?

"A I don't know.

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"Q Did anybody ever tell you Morrissey carried a knife or gun?

"A Nobody ever told me and I never suspected he did, but I don't know."

Now we are reading from the deposition of Mr. Charles Snow, continuation of the deposition.

THE COURT: Unless you have a couple of questions, I think our reporter deserves a respite.

MR. McINERNEY: I think he does, too, your Honor.

THE COURT: All right.

Ladies and gentlemen, we will take our midafternoon recess at this time.

Please do not discuss the case among yourselves. Keep an open mind on all facets of the case until it is completed.

We are moving along toward that end and I expect that by some time tomorrow the evidence should be complete in the case.

We will take our midafternoon recess now and resume in ten minutes.

The jury is excused. Counsel are excused as well.

(Recess.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen, we will resume now

with the second portion of the deposition of Mr. Snow.

MR. McINERNEY: Page 84.

THE COURT: Let me just make one comment.

According to the transcript which I have in front of me, this second installment was September 6, 1974, some six months, I guess, after the first session.

Is that correct, gentlemen?

MR. McINERNEY: That's correct, your Honor.

THE COURT: All right. We will proceed.

MR. McINERNEY: Page 84, line 8.

"Q Prior to the time of Mr. Morrissey's arrest on July 1, 1971, was there official literature distributed in the hall?

"A The Pilot was the only literature that was distributed in the hall.

"Q How was that distributed in the hall?

"A We had two bins in which The Pilot, large numbers of them, were always stored ready for the taking by anybody who wanted one.

"Q Where were those bins located?

"A At the entrance to each individual hiring hall.

"Q That was the only literature in those bins, The Pilot?

"A That is what the bins were for and that is what we

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kept it for as far as we could control it."

Line 10 on page 86.

"Q Did the subject of passing out unauthorized literature ever come up at any of those monthly membership meetings?

"A I can't recall.

"Q Did you ever hear it come up?

"A At the monthly membership meetings?

"Q Yes.

"A I can't recall.

"Q Did it ever come up at any meetings you attended?

"A I really don't remember.

"Q About these fights that were in the hall, did that subject come up, ever come up at the monthly membership meeting?

"A I don't remember whether it was ever a particular subject of any officer's speech or whether it was brought up as a motion or anything like that.

"Q Getting back to this notice," the notice we have been referring to, your Honor --

THE COURT: Let's not.

MR. McINERNEY: Exhibit 4 in evidence.

THE COURT: That is exactly the point I was going to make. We will identify it as Exhibit 4 in evidence.

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MR. McINERNEY: Exhibit 4 in evidence.

THE COURT: Right.

MR. McINERNEY:

"Q Getting back to this notice, Exhibit 4 in evidence, did you have any conversations about that notice after it was promulgated?

"A Yes.

"Q Who did you speak with?

"A The master-at-arms.

"Q When did you do that?

"A After it was published. I asked him to post it on the wall and to adhere to it."

THE COURT: I have a correction to that in an affidavit sworn to by the witness.

He says the word should be "them", so that the answer, according to the witness, should be, "After it was published, I asked them to post it on the wall and to adhere to it."

MR. McINERNEY:

"Q Do you remember when that was?

"A No, I don't, not exactly.

"Q I ask you, were there any arrests made at any of the fights?

"A Nobody ever wanted to press any charges."

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Now we are going to page 92, line 11.

On page 19, I am referring to the earlier deposition on page 19. The question starts on page 18, but there are a lot of interruptions here.

"Q Was Morrissey one of those who was inclined to start fights in the hall?

"A In the middle --" there are a lot of interruptions and continuing, "Whether Mr. Snow was, whether I was," and more interruptions.

"A Morrissey never provoked the fight, but he wouldn't back off from it, I must --"

THE COURT: We have been through that, haven't we?

MR. McINERNEY: That is the first one, your Honor. Skip all that. I will withdraw that question.

Page 93, line 18.

"Q You did say that Morrissey never provoked a fight, but he wouldn't back off from it?

"A Yes.

"Q Did you ever see anyone start a fight with Morrissey at any time preceding the arrest?"

MR. MINA: Objection.

MR. McINERNEY: The answer appears on page 94, line 8, your Honor.

THE COURT: I will allow it.

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MR. McINERNEY:

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"A The word 'fight' might be a wrong choice. I use the word 'fight' as a half argument. I use the word 'fight' as a thing that might ensue and become one where physical force is being used. I use the work 'fight' in this instance as not keeping it level and causing a crowd to collect. A fight is an argument in this language the way I use it. That's what I meant.

"Q You mean Morrissey wouldn't provoke an argument, but he wouldn't back off from one, is that what you mean?

"A Morrissey would never go over to anyone and start to shout and yell. That is what I meant when I said that he would not provoke a fight or an argument, but he would not back off from an argument.

"If a question was raised in a discussion and he would discuss it, start shouting like everybody else would be shouting, and in the heat of the commotion he would get just as angry as the guy talking to him and this might be what eventually ensued and finished with a fight, and that is what I wanted to prevent.

"Q Had you seen persons arguing with Morrissey?

"A Yes, after he had argued with them. I might have come in in the middle of an argument between Morrissey and somebody else.

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"When I say 'Morrissey wouldn't back off,' I mean that Morrissey would talk to somebody and try to prove his point and if the argument became heated and emotional, he would stick with it.

"Q Do you recall any instance, any one instance where you did see someone arguing with Morrissey?

"A Yes.

"Q Would you tell us what that instance was?

"A I can't recall it exactly, but there were times when an argument was going on between him and somebody else. I'm not telling you now or guessing at who provoked it.

"Q Do you know who was in the argument with Morrissey?

"A Other members, generally. I couldn't name anybody. And I asked them to stop it, don't hand out the literature any more. If you think you fellows want to have a fight about this thing, tell it to Morrissey directly. Perhaps if you guys want to fight, do it outside, don't louse up the office."

THE COURT: The witness has corrected that word and said that word should be 'union' instead of 'office'.

MR. McINERNEY: "Don't louse up the union. Don't do it here, go down to the park, fight it out.

"This is concerning any kind of an argument, and there were many arguments that never had anything to do with Morrissey or politics or anything."

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Page 97, line 25.

"Q Mr. Snow, do you remember seeing Morrissey talking with any of the union officials in the period shortly preceding July 1, 1971?

"A I don't remember exactly when I saw him talking to union officials, but I have seen him talking to union officials.

"Q Do you remember the persons that you saw him talking to?

"A Yes.

"Q Who were they?

"A Port agent, Joe Labaczewski.

"Q Anybody else?

"A Paul Pitronia, some of the National officers."

MR. MINA: Your Honor, at this point I would note the correction on page 98, line 13.

THE COURT: Yes. The correction reads as follows: "The reference to -- "

MR. McINERNEY: May I have a copy of these affidavits? I haven't been served with any copy of them.

THE COURT: The Court has the original.

MR. MINA: That is interesting, your Honor, because somebody from Mr. McInerney's office came up to my office last week and I personally gave him these changes.

MR. McINERNEY: I haven't seen it.

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THE COURT: I am reading and if you want this after I am finished --

MR. McINERNEY: I have a copy here.

THE COURT: We are now on the top of the second page and there it says, "Page 98, line 13. The reference to 'Paul Pitronia' is incorrect, but the deponent," that is Mr. Snow, "is unable to recall at this time the name of the person to whom a reference was made."

MR. McINERNEY:

"Q Do you remember which of the National officers?

"A I couldn't, passing words. We knew them all, they all knew him. They would talk to each other. Nesbitt would talk to him. Nesbitt would probably kid him most of the time."

Skipping to page 101, line 3.

"Q Would that refresh your recollection in any way as to whether or not you had that card with the elements of the crimes of harassment and criminal trespass filled out on it?

"A I might have had it with me and I might not. I know I referred to the card with the exact quote of the harassment element and the trespass element.

"Q Do you remember when the police officers came to your office --"

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MR. MINA: Could I assume we are skipping to line 18?

MR. McINERNEY: Line 18.

"A Yes.

"Q When the police officers were in your office, did you show them the card with the elements of criminal trespass on it?

"A I don't remember if I showed them the card.

"Q Do you remember whether or not --

"A I was rather excited.

"Q Do you remember whether or not you referred to the card and told them what the elements were?

"A Well, I remembered it without referring to the card or whether I looked at the card, I don't know.

"Q Do you know what happened to the card?

"A No.

"Q Do you keep a file on Mr. Morrissey?

"A I have a file on almost everybody that has ever caused an incident in the hall.

"Q Including Morrissey?

"A Yes. That arrest was certainly on record, if nothing else. I don't remember anything."

I call for the production of that file.

MR. BERGADANO: Your Honor --

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MR. McINERNEY: I have a copy of it.

MR. MINA: We gave this to Mr. McInerney last week.

MR. McINERNEY: Yes, is this it what -- this is what we discussed at the side bar.

Is this the entire file?

MR. MINA: It certainly is. That is what was asked for.

MR. McINERNEY: Mark it for identification, please.

xx (Plaintiff's Exhibit number 24 was marked for identification.)

MR. McINERNEY: I offer it in evidence.

MR. BERGADANO: I have never seen it, your Honor.

Is it being offered against my clients?

MR. McINERNEY: No.

MR. BERGADANO: In that case, I have no objection.

MR. MINA: No objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit number 24 was received in evidence.)

MR. McINERNEY: Your Honor, I would like to read the last answer.

"A Yes, that arrest was certainly on record, if nothing else."

I don't remember anything and I don't see anything

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in that evidence that was delivered as part of the whole file relating to that arrest, your Honor.

MR. MINA: Your Honor, to explain that, might I respectfully request that the next couple of questions and answers be read?

THE COURT: If he doesn't, you may.

You made a statement, counsel. Do you want to read what follows?

MR. McINERNEY: I will continue to read, your Honor.

THE COURT: Then do so.

MR. McINERNEY:

"Q Is that record here in your office in the building?

"A I couldn't tell you where it is, because since I got sick, the building had been relocated seven times and I'm missing half my files. I don't even know where they are.

"Q Do you keep that file as an individual or do you keep it as part of your work for the N.M.U.?

"A All the files I keep are part of the work for the N.M.U.

"Q In other words, that is an N.M.U. file.

"A I have no reason to keep a personal file.

"Q That is an N.M.U. file, that file that is kept on Morrissey?

"A You could consider it one. It is an incident card

very much like a card that you see in the police department where, who, what, why, how.

"Q Would that card also -- did you design this file-keeping system?

"A Yes.

"Q Was this more or less modeled on the file-keeping system of the New York City Police Department?

"A Yes."

Your Honor, I have read it and, again, I call your Honor's attention to the fact that there is nothing in that file pertaining to this arrest.

THE COURT: The jury can draw its own conclusions from the physical appearance of the exhibit, together with the testimony of the witness, which has been and will be read by counsel.

You may proceed.

MR. MINA: Your Honor, at this point, may I be permitted to read one question and answer on that page?

THE COURT: If you point out to counsel, I'm sure he will read it.

MR. McINERNEY: I am reading them all.

MR. MINA: Line 17.

MR. McINERNEY:

"Q Do you keep files on National officers?

"A No.

"Q Is it possible that that index card went into Morrissey's file?"

I am not referring to --

THE COURT: Please.

MR. McINERNEY:

"Q Is it possible that index card went into Morrissey's file?

"A Because of the many times that I had referred to it, I don't know whether it went back in the file or whether it is in somebody else's hands or the legal counsel has it. I don't know what happened to it.

"Q If that file is where it belongs, is it in the building?

"A I wouldn't know that. Since I have come back to work I haven't been able to make heads or tails out of the files. Some of them are in Mr. Pogor's office, who took my place; some of them are downstairs in my little cubbyhole. I don't know where it is.

"Q He has not taken your place yet, has he?

"A He has been acting in my behalf while I was gone.

On page 29 I asked, "Did the National officers ask you to do an investigation on James Morrissey," and your answer was, "A long time ago, yes.

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"Did you do the investigation?

"A Yes.

"Q Do you know what was the result of that investigation?

"A I just found out that Jimmy had once been locked up for robbery when he was a kid.

"Q Are the results of that investigation in the file you referred to realier?

"A No, I don't know.

"Q Did you put the results in the file?

"A I wrote them down to give a report of them.

"Q Who did you report to?

"A I don't know who it was. Someone in the National office. I don't know.

"Q You don't remember who?

"A No.

"Q Do you remember when:

"A I don't remember when.

Skipping to page 105, line 25.

"Q Did you know that Morrissey had received more votes than any of the other opposition candidates in that election, that is, referring to the 1969 election?

"A No, I didn't know.

Skipping down to line 15.

Falk 102

"Q Do you remember a report to Mr. Wall?

"A A written report?

"Q That is my next question. Was it a written report or did you tell him orally?

"A I reported the incident on my form and I feel sure, I don't remember doing it exactly, that I gave him a copy of that.

"Q There was a written report on a form; is that right?

"A No. A photostatic copy of the form itself. It's a front and back thing, you know, and I was able to manipulate the copy machine so it came out on one sheet of paper. It is just a factual --

"Q It is like the cards that the police department use for that purpose?

"A Yes, with some additions regarding social security numbers and book numbers.

"Q State the substance of your conversations with them. The only one you remember distinctly is Wall?

"A Is that a question that is in here?

"I didn't go into detail with anyone but Mr. Wall and counsel, but I told them about the incident, that it happened the way it happened. Mimmo would ask --

THE COURT: The word "out" should be inserted

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after literature.

MR. McINERNEY: "--handing out literature in the hall in compliance with this notice and he absolutely refused and said, 'Do what you want about it, I'm not moving, I'm not stopping.'

"Those words might have been in the report, but this is what I remember saying. This is the reason that I thought it was best to prevent any further distribution of it and to prevent any possible argument or fight, that the charges discussed with Mr. Gruber be brought to bear.

"Q When was the last time you saw that report?

"A A month or two after the incident, I suppose.

"Q Is that report in Morrissey's file?

"A I don't know. I don't know where the files are.

"Q Should it be in Morrissey's file?

"A It should be."

I have nothing further with Mr. Snow, your Honor.

I would like to renew an application. Shall I do it in the absence of the jury?

THE COURT: You want to renew an application? Let's do it at the side bar.

MR. McINERNEY: All right, your Honor.

(At the side bar.)

MR. McINERNEY: Your Honor, this is on the Lucio

article we spoke about, which was published in The Pilot in 1967.

Shall I get the number of the article for identification?

THE COURT: No, I think I have it here.

I believe you are speaking of Plaintiff's Exhibit 16 for identification.

MR. McINERNEY: That's correct, your Honor.

THE COURT: That was the article which we discussed, I believe it was, yesterday, which appeared in The Pilot and was signed by a person by the name of Lucio.

MR. McINERNEY: That's right, your Honor.

The questions and answers which would lead up to the introduction of that into evidence --

THE COURT: You are reading from what questions?

MR. McINERNEY: Mr. Curran's deposition.

"Q In 1967, were you the chief executive officer of the N.M.U.?

"A Yes.

"Q Is The Pilot the official publication of the N.M.U.?

"A Yes.

"Q As the chief executive officer, were you interested in what appeared in The Pilot?

"A Yes.

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"Q Having an interest in The Pilot, did you read The Pilot?

"A Yes."

THE COURT: Why don't you read the next question?

MR. McINERNEY:

"Q Did you read all of The Pilot, all of what appeared in The Pilot?

"A No.

"Q Weren't you a member of the editorial board of The Pilot?

"A Yes.

"Q Did you read the headlines at least in The Pilot?

"A Yes."

I go down to page 15.

"Q From 1969 to the present time, have you ever read any of the articles which are the views of the membership?

"A Yes.

"Q Have you ever in all the time that you have been reading the views of the membership seen an article where it shows a picture of the writer of the article, except this one.

"A Repeat the question.

"(Question read back.)

"A No.

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"Q Have you ever during all the time you have been reading the views of the membership seen a letter to the editors here or to the views of the people which has been headlined in this fashion?

"A I can't recollect that."

Going to page 68.

"Q Was this a standard type article, Mr. Curran? As one of the editors you should know that.

"A I was not one of the editors, I was the president of the union.

"Q As such, you were a member of the National office?

"A Yes.

"Q Did you know that the constitution of the union says that the National office --

"A Is the editorial board.

"Q As one of the editorial board, you knew, did you not, whether or not this was an unusual type article?

"MR. MINA: Did you?

"A Yes.

"Q Was it a usual type article?

"A It was a special article."

Your Honor, that is a question for the jury whether or not this article -- of course it is certainly admissible against the N.M.U. because it is the official organ of the

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union.

This is a periodical paid for by union funds distributed to all the portsof the union.

Mr. Morrissey has no chance of answering this type article and here is an article that says a man was mugged. What more violent thing can you imagine than that? That is pure malice.

Here is a man who was mugged and they allow in his union periodical to have it said that he fell off a bar stool, and this is at a time when he is having the union election in 1996 set aside by the Department of Labor.

I just can't conceive that this was not deliberate, your Honor.

MR. MINA: Your Honor, I renew the objection that was made yesterday to the same article for the same reason.

THE COURT: May I suggest that though I don't want to get into the other remedies your client may have had, it would seem to me that if this matter were published and it was libelous, you could have brought an action for libel, he could have brought an action for defamation. He does seem to know where the courts are located and under the circumstances, because I would regard the material which you offer here as inflammatory in nature and although you might say it is probative of malice against the union, it is not

attributed directly to any of the individual defendants and I think under the circumstances I will exercise the discretion which I have to exclude this inflammatory article.

The objection is sustained.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you, your Honor.

(In open court.)

THE COURT: Mr. McInerney.

MR. McINERNEY: I call Mr. Morrissey to the stand.

THE COURT: Mr. Morrissey recalled.

I suggest we sear him again.

J A M E S M. M O R R I S S E Y, recalled, having first been duly sworn, continued and testified futher as follows:

DIRECT EXAMINATION

BY MR. McINERNEY:

Q Have you ever made any efforts to have your materials published in the N.M.U. Pilot?

A Yes, I have.

Q On how many occasions prior to July 20, 1971?

A On numerous occasions. At least, at aleast a dozen times.

Q With what results?

A The results were nil. I just got no answer to it.

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Q Is your wife a communist or Trotskyite?

MR. MINA: Objection.

I thought this was understood yesterday that Mr. Morrissey was being put on for only one set of question.

THE COURT: I don't see that it is particularly relevant what Mr. Morrissey's wife was, but I am going to let him answer the question.

Mr. Morrissey --

A Definitely not. As a matter of fact, she is a registered Republican. I'm a Democrat myself.

THE COURT: Fine. That gives us a even vote, at least, in one family.

Anything further?

MR. McINERNEY: Nothing further, your Honor.

MR. MINA: I have some questions, your Honor.

THE COURT: You may inquire.

CROSS EXAMINATION

BY MR. MINA:

Q Since your wife has been brought up, Mr. Morrissey, can you explain to the jury what connection, if any, she has had with your organization since 1971?

MR. McINERNEY: I object as irrelevant and immaterial.

THE COURT: You opened the door, counsel. I don't

know why you opened the door, but you did.

MR. McINERNEY: Mr. Curran opened the door when he called his wife a Trotskyite, your Honor.

THE COURT: I don't know why that was brought in and why it was left to remain in the case.

I don't regard Mr. Curran's feelings toward Mrs. Morrissey to be an issue in this case. She is not a party in the action. She appears to be the wife of the plaintiff and, under the circumstances, she is a separate person.

You may inquire, Counsel.

MR. McINERNEY: May I hear the question again, your Honor?

THE COURT: Yes, of course.

(Record read.)

MR. McINERNEY: Now, your HOnor, that is 1971?

MR. MINA: I am sorry, your Honor, I would change that to in July 1971.

THE COURT: All right, he is changing his question. I think your objection would have been properly taken.

A My wife has been very helpful to me in my company, my entire company with the N.M.U. It goes all the way back to 1966.

Q All right. So that since 1966 your wife has been a part of the gorup that has helped you with your pamphlets,

with letter writing, that type of thing; is that correct?

A As part of the group?

Q Yes.

A Well, she has been part of my effort within that group, yes.

Q And as part of that effort your wife, would I be correct in assuming that she has helped you make up some of the pamphlets that you have done?

A Any way she could help, yes.

Q And in addition to writing up the pamphlets, has she also helped with letter writing?

A With letter writing?

Q Yes.

A Any -- letter writing?

Q Yes.

A You mean in my leaflets?

Q I assume from time to time you have written letters.

A Letters to the National office or leaflets?

Q Yes.

A No.

In the composition of the letters are you speaking? No.

Q Composition or typing.

A Yes, she has typed letters for me, yes.

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Q So she does type; is that correct?

A She is not a typist, no.

Q But she has helped in the typing; is that correct?

A Well, she is a -- what do you call -- hunt-and-peck kind of typist, yes.

Q And in that regard, had she helped any of the other people that worked with your organization in helping them with their articles?

MR. McINERNEY: Now, Your Honor, it is getting a bit far afield.

THE COURT: Yes, I think it is, too. I don't see that.

MR. MINA: Your Honor, I would ask, since the door was opened, that I will make this subject to connection.

THE COURT: All right. You are making a representation. You may proceed on that.

BY MR. MINA:

Q Has she helped other members of your group that ran with you?

A In what way?

Q Typing letters.

A Not to my knowledge.

Q Could you tell the jury, what is your wife's name?

A My wife's name?

Q Yes.

A Hannah.

Q Hannah Morrissey?

A Yes, yes.

MR. MINA: I have no other questions at this time, your Honor.

MR. BERGADANO: No questions, your Honor.

MR. McINERNEY: Nothing further, your Honor.

THE COURT: You may step down, Mr. Morrissey.

(Witness excused.)

THE COURT: Mr. McInerney?

MR. McINERNEY: Will your Honor take judicial notice of the penalties for the charges against Mr. Morrissey, which were specifically criminal trespass in the third degree, Section --

MR. BERGADANO: If your Honor is going to or not going to take judicial notice, the statute is on the books and I am sure your Honor can read it for yourself rather than having it read to the jury.

THE COURT: Yes, I am.

If you will submit to me the appropriate statute and the penalties portion thereof, I will take judicial notice of it and the matter may then be spoken about to the jury.

MR. McINERNEY: Thank you, your Honor.

THE COURT: I suggest that counsel can agree on that. The statutes as published in McKinney's should suffice for that purpose.

MR. BERGADANO: Certainly, your Honor.

MR. McINERNEY: Plaintiff rests, your Honor.

THE COURT: Very well.

Ladies and gentlemen, the plaintiff has now concluded the presentation of his case.

At this time in a civil trial, it is necessary for the Court to hear counsel on certain matters of law.

Therefore, I think it would be appropriate if I excused the jury at this time until tomorrow morning.

I am going to excuse the jury until tomorrow morning at 9:30 a.m. We will make a 9:30 start tomorrow, and I anticipate, as I think I have indicated already, concluding the evidence in this case and we may move beyond that point.

I am certainly at the moment hopeful that we will. So within the next day or two the case should be given to the jury.

In the meantime, please do not discuss the case among yourselves, nor remain within the presence of any other person discussing the case. In the event you should read, see or hear anything about this case via any of the media

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outside of this courtroom, you are directed to report the matter to me at once.

Finally, despite the fact that the plaintiff has completed his presentaiton, you should continue to keep an open mind on the case until all of the evidence is in, until after the summations and the charge and until the case is given to you for your consideration.

The jury is excused. You are directed to return to continue hearing this case tomorrow morning at 9:30 a.m.

(Jury excused.)

MR. MINA: Your Honor, could I request five minutes just to get the motions ready?

MR. BERGADANO: Before that, your Honor, I believe the plaintif wishes to make a motion as to my clients, to which I will have no objection.

MR. McINERNEY: Yes, your Honor.

I would move that we have a discontinuance against the defendants Mr. Freedman and Sovel with prejudice.

MR. BERGANDANO: And without costs.

THE COURT: In other words, your application is to sever and dismiss all of the claims against Mr. Freedman and Mr. Sovel with prejudice and, I would assume, without costs.

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MR. McINERNEY: Yes, your Honor.

MR. BERGADANO: I have no objection, your Honor.

THE COURT: Very well.

On application of the plaintiff and on consent of the counsel for the defendants Freedman and Sovel, or at least without objection on the part of counsel for the defendants Freedman and Sovel, the complaint, all causes of action within the complaint are dismissed against the defendants Freedman and Sovel with prejudice and without costs.

MR. BERGADANO: Thank you, your Honor.

THE COURT: If you wish to submit a stipulation to that affect to the Court to be so ordered, I will so order it. The statement I have just made is oral and it is in the record. It might be more appropriate if you prepare and sign a stipulation and I will be prepared to so order it.

MR. BERGADANO: If you Honor wishes, but I, for my purposes, will be satisfied with the record and I will order a copy of that portion of the transcript on plaintiff's motion.

MR. McINERNEY: I think so, your Honor. It is a stipulation in open court and it is as binding as any written document.

THE COURT: Let me make one query, then, before we

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proceed.

Mr. Morrissey, you are the plaintiff in this action and I would ask you if you agree to the dismissal of all claims presented in the pleadings here against Mr. Freedman and Mr. Sovel with prejudice and without costs?

MR. MORRISSEY: Yes, sir, I do.

THE COURT: Very well.

The record reflecting that counsel have stipulated and the plaintiff has agreed, the Court will consider the stipulation orally entered into and orally so ordered by the Court to be the final stipulation and order in this case insofar as the case relates to the defendants Freedman and Sovel.

MR. BERGADANO: Thank you, your Honor.

THE COURT: At this point, Mr. Bergadano, you may withdraw from the courtroom, and I would suggest tomorrow morning, gentlemen, when we resume, I will indicate to the jury that Mr. Bergadano is no longer with us and that they should not draw any inferences one way or the other from the fact that he is no longer here and also should not draw any inferences from the fact that Mr. Freedman and Mr. Sovel are no longer in the case.

Is that agreeable, gentlemen?

MR. McINERNEY: That is agreeable to the plaintiff,

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your Honor.

MR. MINA: Agreeable, your Honor.

THE COURT: Very well.

MR. BERGADANO: Thank you, your Honor.

THE COURT: The Court is prepared to hear motions on behalf of the remaining defendants.

Off the record.

(Discussion off the record.)

MR. MINA: Your Honor, at this time, on behalf of the defendants the National Maritime Union of America, Joseph Curran, Shannon Wall, Charles Snow and James Nimmo, we would move to dismiss the first cause of action based on the Landgrum-Griffin Act on the grounds that the Landgrum-Griffin Act has no application now nor has it ever had any application to a claim for an arrest.

The Landrum-Griffin Act states and has as its legislativepurpose the remedying of union problems relating to sanctions which are applied to a union member insofar as his membership in that union are concerned.

The very purpose of the Landgrum-Griffin Act was to give a complainant a remedy where he had not such remedy at law.

In this case the claims is that there was a malicious prosecution and an arrest and there is a remdy at

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law which is evidenced by the second cause of action in this case, and that being for malicious prosecuation.

We would respectfully submit to the Court that the Landgrum-Griffin Act in no way applies to this situation.

Again, as previously mentioned after openings, an exhaustive study of the case law has revealed no situation where it has ever been applied to this type of an incident. There has been no showing by the plaintiff on his case that this plaintiff was deprived of any of his union rights. The only allegation and the only thing that has been shows is that plaintiff in this case was asked to leave a building, refused to do so and was arrested. There is no showing that this man was not a member in good standing at the time of this incident and thereafter.

As a matter of fact, the plaintiff's own complaint in this case alleges that he was a member in good standing at all times mentioned in that complaint. There has been no proof whatsoever that Mr. Morrissey lost any of his union rights and we, therefore, take the position that Landgrum-Griffin does not apply in any way to this case.

We would further point out to the Court that under the Landgrum-Griffin Act the remedies would indicate that this case does not come under this section. Those remedies are for injunctive relief, for example, to get a book back.

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In this case those remedies could not even be applied because none of the sanctions which the act is used to remedy were applied in this case.

THE COURT: As I understand the Landgrum-Griffin Act, it would go further. They do talk about such relief, this would include injunctions, but not be limited to it, and I read at least two cases which indicated that compensatory damages were allowable under the Landgrum-Griffin Act.

MR. MINA: In that regard, your Honor, we would respectfully submit to the Court that the plaintiff has shown no compensatory damages under the Landgrum-Griffin Act.

MR. COURT: I will hear you out and then I will rule on everything.

MR. MINA: In that regard, your Honor, the cases submitted, I think, clearly show that a plaintiff under the Landgum-Griffin Act is not entitled to conpensation for emotional distress. That is not the purpose of the act. Or embarrassment.

In this case, we respectfull submit to this Court that the plaintiff has not proved any damages whatsoever.

THE COURT: What about his $1,000 legal fee?

MR. MINA: Your Honor, I would respectfully submit that there has been no showing in this case that $1,000

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legal fee is a reasonable one. There has been testimony from the plaintiff that he has never paid that. There is also testimony that he has never been bothered for it.

There is also and the only other obligation made was loss of time, and that was not proven. It was only stated by the plaintiff and it was then established that he was on medical leave at the time.

THE COURT: This you can argue to the jury, but I suggest that this will take the plaintiff beyond the plaintiff's case. But you may proceed.

MR. MINA: Additionally, your Honor, we would state at this point that no action lies under the Landgrum-Griffin Act due to the fact that the act itself states that that act is not to be applied to a civil action until such time as administrative remedies have been exhausted.

There has been a complete lack of proof in this case to show that the plaintiff attempted any administrative remedies.

The case law is very clear that if not taking the administrative remedy route, then there must be a showing that doing it would have been futile. There has been no such showing of that, either, in this case.

On that ground, again, we would move to dismiss the Landgrum-Griffin Act.

THE COURT: I will hear your entire motion and then I will rule.

MR. MINA: Further under the Landgrum-Griffin Act, the plaintiff asks for counsel fees.

We would at this time respectfully request that any counsel fees under that section be denied since even the case which has been cited to the Court by the plaintiffs to your Honor is clearly distinguishable to the case at bar.

That case indicated that in order to recover attorneys' fees there would have to be some type of an unjust enrichment situation or that the plaintiff would be suing for a benefit to the union.

A review of this complaint and the relief asked by the plaintiff clearly indicates that he is asking for money damages for himself and to no benefit to the union.

On the second case of action, we would move to dismiss against all of the defendants on the grounds that in order to prove malicious prosecution it is necessary to show malice on the part of those defendants, that is, the N.M.U. and each one of the individual defendants; it is necessary, further, for the plaintiff to show lack of probably cause for the arrest.

In this case the evidence has already shown that

at the time of the occurrence Joseph Curran was in Florida. There has been no testimony whatsoever in regard to Mr. Curran to show that he had any knowledge of the arrest or had anything whatsoever to do with the prosecution that followed for the next two weeks.

In regard to Shannon Wall, there is no showing that he learned of the arrest until after it had happened and, further, not one iota of testimony to show that he had anything to do with the prosecution.

The defendants Nimmo and Snow -- Nimmo, through his appearance and Snow, through his deposition, have indicated that they were the security officers at the scene of the arrest that they asked the plaintiff on a number of occasions to please leave the building otherwise they would have to have him arrested, that he refused to do so, and at this point pursuant to the policy of the union they called the police to have him arrested.

There has been no showing whatsoever of malice on the part of either of those defendants. As a matter of fact, I think it is very clear from Mr. Nimmo's testimony and from the deposition of Mr. Snow that they considered Mr. Morrissey a seaman just like them. There has been not one shred of evidence to show malice on their part against them.

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THE COURT Let me suggest, I think there could be an argument to infer malice relative to Mr. Snow. There was that exchange that we had about his being included in the officers' pension fund and you will recall that Mr. Morrissey had brought an action to exclude from the officers' pension fund non officers such as Mr. Snow.

I think for the present purpose the jury would have the right to infer that because of that pending lawsuit, which was going to deprive Mr. Snow of certain rights, I think they could infer malice sufficiently to at least preclude my dismissing the case as to Mr. Snow at this point.

You may proceed.

MR. MINA: In that regard, your Honor, and we would like to make the point as strongly as possible, in order to sustain a cause of action for malicious prosecution it is necessary to show the maliciousness on the part of the individual charged, the lack of probable cause and their involvement with the arrest; not only the prosectuion or possible involvement with the prosecution.

In order to sustain it, they must be involved in both the arrest and prosecution and have initiated it.

In this case there has been no showing that either Mr. Wall or Mr. Curran was remotely aware of an

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arrest talking place until some time later.

THE COURT: Mr. Curran, while he may not have been proved to be directly aware of the arrest, appears to this Court to have become aware of the prosecution prior to its termination on July 20, and I would note that union counsel were present and argued for the prosecution on July 20. I recall that from the testimony of the assistant district attorney who appeared here, Mr. [illegible]man.

Under the circumstances, I would suggest that although Mr. Curran, as far as I can tell, had nothing to do with the initial arrest, he was aware of the prosecution and I think there is a fair inference that the appearance of union counsel on the day of the hearing to support the prosecution was as a result of the approval of the president of the union at the time, Mr. Curran.

MR. MINA: Your Honor, at this time we would further move to dismiss the cause of action for exemplary damages.

THE COURT: I would like to make one other comment at this point which I think is worth-while for the record.

I think it is conceded malice can be proved by either direct or circumstantial evidence.

I would suggest that the jury can infer malice

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from want of probable cause and, therefore, a prima facie case on that later issue, that is, a lack or want of probable cause makes out a prima facie case on the form issue, that is on the issue of malice as well.

I think that is the law in New York and that is the law I would be following here in connection with the second cause of action.

No, I think a prima facie case has been made out against the N.M.U., against Mr. Curran, against Mr. Snow.

If you want to speak further, I will hear you.

I have reservations relative to whether a prima facie case was made out against Mr. Wall and Mr. Nimmo.

Mr. Nimmo would appear to have in this Court's judgment, anyway, no independent responsibility. He appears clearly to have been the agent to carry out the acts in question. He appears to me to have been, in the context, a noncommissioned officer carrying out his orders, and that is the way the Court sees Mr. Nimmo at this point. But I will hear you out and then I will rule on the entire motion after I have heard from your adversary.

MR. MINA: Your Honor, then in that regard, we would again go back to what we agree is the law in New York

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State, that malice certainly can be inferred from lack of probable cause, but we would respectfully take the position that that lack of probable cause does not exist in this case.

It has been testified to even by the plaintiff himself that he knew of the fact that this notice had been posted banning distribution. He admits that they tried to get him outside a number of times and that he refused to go out. It was not until this happened and being aware of the policy that existed regarding distribution of literature that the arrest took place.

THE COURT: I suggest he had a perfect right to distribute literature in those premises on July 1, 1971, and I am only questioning in my mind whether I should charge that to the jury as a matter of law.

But I am persuaded in this stage of the record that he had a perfect right to do it and, thus, there was a lack of probable cause, and there being a lack of probable case we reach the inference of malice, and under the circumstances I think at this stage of the case there is a prima facie case made out.

I don't say that you are not going to persuade me otherwise as you point to other material during your presentation tomorrow, but I am looking at the case in the

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context of the plaintiff's case only and whether the plaintiff has made out a prima facie case.

MR. MINA: Then I will now address myself to the defendant Shannon Wall in that regard.

I would move for a dismissal on the grounds that absolutely no malice has been shown on the part of Mr. Wall, absolutely no connection has been shown with Mr. Wall in regard to the arrest or the prosecution. The only testimony is that he did become aware of the arrest afterwards.

In that regard, I would move for a dismissal as against Mr. Wall.

THE COURT: Although he signed the notice, I do not think that the mere signing of the notice would be sufficient insofar as the case is concerned relative to Mr. Wall, but let me hear you out and then I will hear your adversary.

MR. MINA: As to the third cause of action, your Honor, we would move to dismiss the cause of action for punitive damages on the grounds that malice or connection with this arrest have been show as to none of the defendants.

THE COURT: Anything else?

MR. MINA: That is it, your Honor.

THE COURT: Let me hear from your adversary.

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MR. McINERNEY: May it please the Court, I am almost at a loss to answer the first argument that claims that Mr. Morrissey did not lose his union rights.

As your Honor has so well pointed out, he had an absolute right to be there distributing his literature on the day in question.

The Landgrum-Griffin Act provides certain rights, including the right to mingle with his brother union member , to express his views concerning the administration of the union.

THE COURT: Assuming that, was he not required to exhaust his administrative remedy?

My understanding of the whole premise of this act was that you first went and sought the assistance of the Secretary of Labor, as in the case which was referred to during the trial. If the Secretary acts, he acts on behalf of the union members who are aggrieved. If the Secretary does not act or refuses to act, I think the union member himself would have the right to take the matter into court.

There is no evidence here that the Secretary has refuse to act.

MR. McINERNEY: Excuse me, your Honor, I might interrupt your Honor and say that under this section,

Section 411, 412, which we are operating under here, the Department of Labor has no jurisdiction at all and he has no right to make a complaint to the Department of Labor, that his remedies to go to the district court or to the state court, I believe.

It is a Title I action.

THE COURT: You say that that does not --

MR. McINERNEY: And you have been misled.

THE COURT -- does not have as a condition precedent the obligation to exhaust administrative remedies first?

MR. McINERNEY: No, not with the Department of Labor.

He may have to go to the union, but there was nothing to go to the union about here.

THE COURT: I see your point.

MR. McINERNEY: Thank you, your Honor.

THE COURT: And I am inclined, as I reread Section 411 (a)5 to agree with you, particularly when taken in conjunction with Section 412, which would lead me to conclude that there is no requirement that a person exhaust his administrative remedies.

I am inclined to change my thinking and indicate to you that under this section where an individual

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Union member is aggrieved he does not have to proceed first to the Department of Labor to exhause his administrative remedies.

All right. Next.

MR. McINERNEY: Now, your Hono, of course, to say that he didn't lose any rights, I think we have covered that.

There has been no dispute, at least at this point, that he was not given any written specific charges, he was not given an opportunity to prepare a defense and he was not offered any hearing. That is a simple way of cutting off a man's right, to call in the police and to have him just taken away.

I can't understand anyone would say that it is either an effective removal from the union or, number two, it certainly is otherwise disciplining him and it comes squarely within this act.

On the attorneys' fees, I would suggest, your Honor, that is premature. If I render any benefit to the union membership through my efforts in this action, it will be prophylactic.

Whatever I do for Mr. Morrissey that spills out for the benefit of all the union members is a question.

I have to be successful, your Honor, there is

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no two ways about that. But if I am successful and if the union does derive a benefit from my services, I would think at the proper time I could make application to the Court.

THE COURT: At the moment, frankly, I do not see how prevailing in this lawsuit can really be said to benefit the members of the union.

An argument might be made that by putting the stamp of freedom to distribute literature within the union hall, if you put that stamp in and on the case, this would be a benefit for members generally. I suggest that there is an argument which I would listen to on that subject.

It does seem to me, however, on the matter of counsel fees that I should deny the motion at this time because this is a matter which will be addressed directly to the Court and under the circumstances I think this application could be renewed and argued further at the close of all the evidence, perhaps even while the jury is deliberating on the balance of the case.

As a matter of fact, I am not sure what my decision here would not have to be held up anyway pending the first verdict.

MR. McINERNEY: No question about it, your Honor.

THE COURT: So under the circumstance, I suggest on that, I am going to deny the motion, but tell you now I expect to have it represented at the end of all the evidence and, of course, at that time I will reserve pending the jury's determination of the case.

MR. McINERNEY: Very good, your Honor.

THE COURT: Needless to say, if the jury comes in with a defendants' verdict, that claim for counsel fees would fall automatically.

If they come in with a plaintiff's verdict, for example, on malicious prosecution only, for example, your application would fail.

I think you can receive reasonable attorneys' fees if the jury came in with a verdict on Landgurm-Griffin.

MR. McINERNEY: I am inclined to agree with your Honor.

With respect to the defendant Nimmo, I guess we can call him a messenger boy, a civilian Lieutenant Calley.

THE COURT: Well, isn't he clearly an agent?

MR. McINERNEY: Yes, he is clearly an agent, your Honor. But I will say to your Honor, when you get into this record, if you ever do, and I almost sympathize with you for putting it there, but Nimmo was another one

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that was excluded from the officers' pension fund.

Every master-at-arms was excluded from the officers' pension fund, so Morrissey was not walking into a friendly union hall at Seventh Avenue, there were a lot of people gunning for him up there.

THE COURT: Where is that in the record?

MR. McINERNEY: You took judicial notice of this record, your Honor, and it is in this record that the people who were excluded -- that's why I say to your Honor I sympathize with you for doing it this way, but I do have it in a more convenient form if you want me to present it for Nimmo squarely.

THE COURT: When you say, "this record".

MR. McINERNEY: I am referring to 69 Civ.442, Morrissey v Curran.

THE COURT: I am taking judicial notice of that. I see your point.

What about Mr. Wall?

MR. McINERNEY: Your Honor, Mr. Wall is in a position of power. He knew about this arrest. There is no question about that.

THE COURT: He didn't initiate the prosecution.

Show me anywhere in the case where there is anu evidence that he initiated the prosecution or carried it out

or ordered that it be concluded or prosecuted or continued.

MR. McINERNEY: Your Honor, I have no direct evidence of that, but he is a member, again, of the National office and he had lifted his little finger he could have said to Curran, "Let's lay off Morrissey."

THE COURT: That is not the point.

The point is and the query I have relative to Mr. Wall is whether he initiated the prosecution.

Yes, he did nothing to stop it, but I don't believe that is enought to hold a man for damages on malicious prosecution. I think the question is whether he initiated it, whether he gave impetus to it either at the beginning or during the course of it.

I presumed certain things relative to Mr. Curran. I'm sure you are going to tell me that Mr. Wall fits into the same catagory.

I would suggest to you, I find no writings from Mr. Wall, no statements from Mr. Wall to lead me to the same conclusions I reached realtive to Mr. Curran.

MR. McINERNEY: Well, your Honor, I think this is somewhat in point.

As I recall the testimony -- of course, at this stage your Honor's recollection governs, but as I recall it, Mr. Wall said he never disputed or never disagreed with

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Curran.

What more can you want than that?

Here is the man, secretary-treasurer, he had the second highest position in the union. He knew the arrest had taken place the day of the arrest or the day after and he never did anything to stop it and he got constant reports on each appearance in court.

Your Honor, there is another thing, too, and I hate to be bringing a thing like this, but just what did happen to that written report?

Now, Snow says, " I gave a written report to Wall."

What happened to the written report?

What is this? Is this a minor league Watergate we have here?

MR. MINA: With all due respect, this has nothing to do with the motion.

THE COURT: No, it does not.

M. McINERNEY: It has nothing to do with the motion?

It does, your Honor, because I think you can infer from that, from the fact that that written report is missing and that report was given to Mr. Wall. What happened to it? What was in that report? Did Mr. Wall know what

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the details were? What could he have done about this to stop this prosecution?

THE COURT: What did he do to further the prosecution? What did he do to carry out the result?

You say he is responsible for a cover-up. I don't see it in the context of this case.

MR. McINERNEY: Well, your Honor, he certainly is guilty of an omission. If he is not guilty of something positive, he is guilty of an act of omission here.

MR. MINA: Your Honor, in that regard --

THE COURT: That is not going to help us on malicious prosecution.

What about Mr. --

MR. McINERNEY: Your Honor, excuse me. Not on the motion for malicious prosecution, but of deprivation of the Landgrum-Griffin rights it would.

THE COURT: He signed the notice, but I consider an invalid thing.

MR. McINERNEY: Yes, Your Honor. And he never -- Incidentally, your Honor, there is another thing here, and that is the constitution of the union is in evidence and the constitution of the union has a provision in it that all notices, all notices must be published in The Pilot,

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and Wall said he didn't have this published in The Pilot.

MR. MINA: That is not in evidence, your Honor.

THE COURT: The Court is prepared to rule.

MR. McINERNEY: Excuse me, your Honor.

THE COURT: The Court is prepared to rule.

The Court, after considering the arguments of both counsel, denies the defendants' motion to dismiss the first, the second and the third causes of action.

I would suggest I would want to hear further, perhaps, at the end of all the evidence relative to Mr. Wall and Mr. Nimmo and the malicious prosecution cause of action. I still have a question in my min d about that.

I have concluded that a prima facie case has been made out under the Landgrum-Griffin Section as to Mr. Wall and under the circumstances at this time I am going to deny the defendants' motion to dismiss.

MR. MINA: I respectfully except.

(Adjournment taken to April 17, 1975 at 9:30 a.m.)

GTP

JAMES M. MORRISSEY,

Plaintiff,

vs 72 Civil 2363

NATIONAL MARITIME UNION OF AMERICA et al.,

Defendants

New York, N. Y.

April 17, 1975 - 10:00 a.m.

(Trial continued.)

(In open court; jury in box:)

THE COURT: Good morning, ladies and gentlemen.

Ladies and gentlemen, you will observe that Mr. Bergadano is no longer in court. I would also point out that Abraham E. Freedman and Charles Sovel, the defendants represented by Mr. Bergadano, no longer are in this case. You should not speculate on the reasons why Mr. Bergadano is no longer present or these two defendants are no longer in the case, and you should not draw any conclusions or speculate in any way or make any presumptions by virtue of the fact that Mr. Bergadano and his clients are no longer in the case before the Court and the jury.

We will now proceed with the one matter which was brought to the Court's attention by Mr. McInerney yesterday. He asked leave to re-open his case for a limited purpose, and

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I indicated to him when I was conferring with counsel that I would do that.

Mr. McInerney, you move to re-open the case for the limited purpose of offering one document; is that correct?

MR. McINERNEY: Your Honor, I reviewed the file, and Exhibits 11 and 16 were marked for identification and were not offered in evidence, and I would like to offer those in evidence at this time.

Those are the minutes of the July 20th hearing, which were marked for identification when Mr. Fishman was on the stand, and the original complaint of Mr. Nimmo at the police station.

THE COURT: That is other matter than you took up with the Court yesterday?

MR. McINERNEY: Yes; it is, your Honor.

THE COURT: I did not expect that, and you should have told me that; but let counsel for the defendants look at the documents and indicate his --

MR. MINA: Your Honor, I am familiar with what they are. There is no objection.

THE COURT: Very well. What numbers are those?

MR. McINERNEY: 11 and 16, your Honor.

THE COURT: All right. They are received. No objection.

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MR. McINERNEY: At the same time, you will recall when Mr. Fishman was on the stand, I promised him that I would return his copy of Exhibit 16, and I have the original in court today, and I would like, if we could exchange the original of 16 for the photostatic copy of 16.

MR. MINA: No objection, your Honor.

THE COURT: Very well. That can be done at a recess, gentlemen.

MR. McINERNEY: All right. Fine, your Honor.

I mentioned to your Honor yesterday the offer of NMU's constitution as amended October 1969.

MR. MINA: No objection, your Honor.

THE COURT: That will be received.

xxx (Plaintiff's Exhibit 25 was received in evidence.)

MR. McINERNEY: May I have the concession that that was the constitution in effect --

MR. MINA: On July 1, 1971. So conceded, your Honor.

MR. McINERNEY: And through July 20, 1971.

MR. MINA: So conceded, your Honor.

THE COURT: Anything else?

MR. McINERNEY: Plaintiff again rests.

THE COURT: Very well.

Thank you, Mr. Mina. I think we have accomplished

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what counsel requested promptly, and the Court appreciates the cooperation of both counsel in that regard.

(Plaintiff's Exhibits 11 and 16 for identification were received in evidence.)

THE COURT: The plaintiff having rested, it is not incumbent upon the defendant to either go forward or rest, so I will call upon Mr. Mina.

MR. MINA: Thank you, your Honor.

Mr. Gruber.

S T A N L E Y G R U B E R , called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINA:

Q Mr. Gruber, can you tell the jury what your occupation is?

A I am an attorney.

Q And are you an attorney for the NMU?

A My law firm represents the NMU.

Q And did your law firm represent the NMU on July 1, 1971?

A Yes; it did.

Q On July 1, 1971, did there come a time when you became aware of some type of a problem involving James Morriss

A Yes.

Q Could you tell the jury how you became aware of that?

A Charles Snow, the security chief for NMU, brought the matter to my attention. He told me that Mr. Morrisey was distributing literature downstairs in the hiring hall and that he had been asked several times to stop distributing the literature, but that he was refusing to do so.

Q Based on your conversation with Mr. Snow, what if anything did you tell him?

A I suggested and advised Mr. Snow that he should continue to ask Mr. Morrisey to stop doing what he was doing, that is, to stop distributing the literature, but that if Mr. Morrissey continued to distribute the literature after being requested to stop a few more times, I advised him the best course would be to call the police, and if he refused to stop after the police arrived, to have him arrested.

Q Did you do that based on what you believed to be the policy in that hall?

A Yes; I did.

Q Andfor how long a period of time prior to July 1, 1971 did you understand it to be the policy that this type of literature was not to be distributed inside the hall?

MR. McINERNEY: I object to that question,your Honor.

GTP 6 Gruber - direct

THE COURT: Sustained.

Rephrase your question. You can inquire in that area.

MR. MINA: Yes, your Honor.

Q You say you made this recommendation based on what you understood to be the policy; is that correct?

MR. McINERNEY: I object to that question, your Honor. He is still leading the witness.

THE COURT: He has already answered the question, and I am going to let it stand.

Is that correct?

THE WITNESS: Yes.

Q For how long had that been the policy in that hall?

A To my knowledge, it had always been the policy.

Q And how long had you been with the NMU?

A Well, my firm had represented the NMU since 1963.

Q By the way, is your firm separate, a separate entity from the NMU?

A Yes; it is.

Q When you talked to Mr. Snow, did you advise him as legal counsel?

A Yes; I did.

Q At any time on July 1, 1971, in regard to Mr. Morrissey, did you talk to Mr. Curran?

A No.

Q Did you talk to Mr. Wall?

A No.

MR. MINA: I have no further questions, your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. McINERNEY:

Q Are you a member of the firm of Abraham E. Freedman?

A Yes; I am.

Q Is your firm on an annual retainer of $50,000 a year?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

MR. McINERNEY: Your Honor, he has --

THE COURT: No speeches. Don't bring in material you know to be improper, counsel. He is a retained counsel.

Q I show you Exhibit 15 for identification, Mr. Gruber. Do you recognize that document?

A Yes; I do.

Q As counsel for the NMU, did you work on preparing that document?

A I do not believe so.

Q You say you do not believe so. Do you know, one way or the other?

A My best recollection is that I did not work on the preparation of this document.

Q Did you ever see that document before today?

A Oh, yes.

Q When did you see it?

A For the first time?

Q Yes.

A I saw it some time in July of 1971.

Q And was it before July 20, 1971?

A I believe so.

Q And did you read it at that time?

A Yes.

Q And did you know the purpose for which it was prepared?

A Yes.

Q What was the purpose for which it was prepared?

MR. MINA: Your Honor, objection.

THE COURT: Sustained.

MR. McINERNEY: I offer it in evidence, your Honor.

MR. MINA: Objection, your Honor.

THE COURT: Let me see it.

Do you want to state the grounds of your objection, counsel?

MR. MINA: Yes, your Honor.

The witness has already testified that to his recollection he did not work on it.

THE COURT: Yes, but he is familiar with it. He is a member of the firm.

MR. MINA: Could I request that I be allowed to see it? I don't even know what we are talking about at this point.

THE COURT: All right. It is a memorandum of law.

MR. McINERNEY: Yes.

MR. MINA: There is no objection. I withdraw the objection, your Honor.

THE COURT: There is only one thing. There is some interlineation here, and I think you should explore that, particularly a considerable amount of material on the last page, and my own suggestion is that you may be required to put in a clean copy.

MR. McINERNEY: Maybe I can clear that up. That is the only copy I have, your Honor. It is a copy that was served on me, and those are my notes.

THE COURT: Yes; I know they are your notes, and that is exactly why they should not be before the jury.

THE COURT: Well, your Honor, I have asked him to produce the original.

Q Can you produce the original of the document?

GTP 10 Gruber - cross

A I don't have the original, Mr. McInerney.

Q Do you know where the original is?

A I don't.

Q Do you know whether or not it is in existence?

A I do not know whether it is in existence.

THE COURT: You do not go around, sir, writing all over an exhibit and then offer the entire document together with your notes, and you know it. You should have had this re-typed preparatory to offering it. You know that.

MR. McINERNEY: Your Honor, may I have it retyped now?

THE COURT: You can offer it in evidence. It will be received in a redacted form, exclusive of your notes. All right?

MR. McINERNEY: Fine, your Honor.

THE COURT: Very well, and before it is shown to the jury --

MR. McINERNEY: Absolutely, your Honor.

THE COURT: -- anything you wrote on it should be removed.

MR. McINERNEY: Yes, your Honor.

THE COURT: Very well. It will be received.

MR. McINERNEY: May I say this, your Honor: my notes were at the time of the original criminal trial.

THE COURT: Fine. If you want to get up on the stand and testify, you can testify. Do not testify in front of the jury.

MR. McINERNEY: I am sorry.

THE COURT: The jury will disregard the last statements of counsel, and we will receive the document in the form it was originally presented. I exclude from itwhatever the attorney wrote on it.

MR. MINA: May I note for the record --

THE COURT: No. I don't think that you need note anything. Do you?

MR. MINA: Only when I made no objection, I was not aware that counsel's notes were on it.

THE COURT: No, of course not.

Well, counsel has conceded that the notes do not properly belong on the exhibit.

Q Where are your offices located in New York City? In July of 1971, were your offices located in the Union Hall?

A Yes; they were.

MR. MacINERNEY: I have no further questions.

THE COURT: Thank you, Mr. Gruber.

(Witness excused.)

MR. MINA: At this time, we would call, on the defendant's case, Shannon J. Wall.

SHANNON J. WALL, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINA:

Q Mr. Wall, what was your position with the union in July of 1971?

A Secretary-treasurer.

Q Do you know who Ralph Abrahim is?

A Yes.

Q Could you tell the jury who Ralph Abrahim is?

MR. McINERNEY: I object to that question, your Honor. It is immaterial, irrelevant.

THE COURT: All right.

A Mr. Abrahim is a member of the NMU who ran on the Morrissey slate on at least one or two of the last elections.

Q So that he is a member of the Morrissey group; is that correct?

A That is correct.

Q Did he run, as far as you can recall, with Mr. Morrissey in the 1969 election?

A Yes.

MR. MINA: May I have this marked for identification.

(Defendants' Exhibit B marked for identification.)

Q Mr. Wall, I show you what has been marked Defendants'

GTP 13 Wall - direct

Exhibit B for identification and ask you if you received a copy of that document in the regular course of business as secretary-treasurer of the National Maritime Union.

A Yes. I did.

MR. MINA: At this time, your Honor, I offer that in evidence.

THE COURT: Show it to counsel.

MR. McINERNEY: Objection, your Honor.

THE COURT: Have you seen it?

MR. McINERNEY: I know what it is. I saw it in the depositions, your Honor.

THE COURT: All right. Let me look at it.

(Pause.)

THE COURT: Sustained.

MR. MINA: Your Honor, may we have a conference at the side bar on this?

THE COURT: I would suggest, the first reason is, I note the date. The second reason is, I note it is neither to nor from your client. However, if you wish a conference at the side bar, I will hear you.

MR. MINA: I am sorry. Neither to nor from my client?

THE COURT: That is correct.

MR. MINA: The original is to Joseph Curran, with a

copy to Shannon Wall.

THE COURT: I am sorry. I mean Mr. Morrissey. Mr. Morrissey does not seem to be the sender or the recipient of the letter, and under the circumstances, if I were to receive this letter, I would think that Mr. Abrahim would be testifying here, basically, without being subject to cross-examination. That is the problem that I have with the letter.

If you want a side bar, I will take it.

MR. MINA: Yes.

Your Honor, I think we may have solved the problem. Mr. Abrahim came in. At this time, may I ask that Mr. Wall be excused, and I will put Mr. Abrahim on.

THE COURT: You may do that.

Mr. Wall, will you step down.

(Witness temporarily excused.)

MR. MINA: Mr. Abrahim.

R A L P H P . A B R A H I M , called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINA:

Q Mr. Abrahim, in July of 1971, were you familiar with the plaintiff, James Morrissey?

A Was I what?

Q Familiar.

GTP 15 Abrahim - direct

A Oh, yes. Oh, yes.

THE COURT: You knew him?

THE WITNESS: Oh, yes.

Q As a matter of fact, you had known him for a period of about five or six years; isn't that correct?

MR. McINERNEY: Your Honor, I am going to object on the basis that this is a leading question.

THE COURT: These were preliminary. I would certainly hope that counsel would not lead after these first few questions.

You may proceed, sir.

Q Mr. Abrahim, did you run with Mr. Morrissey in the 1969 election?

A Yes.

Q And have you been a member of Mr. Morrissey's group since at least 1969?

A Yes.

Q And do you know Mr. Morrissey personally, socially?

A I don't know what you mean by "socially". He has been my shipmate, and I have known him for many years.

Q In and around July of 1971, did you come in contact with Mr. Morrissey?

A Yes.

Q And were you aware of the fact that on July 1, 1971,

GTP 16 Abrahim - direct

Mr. Morrissey was arrested at the union hall?

A Yes.

Q And following that arrest, did you discuss that arrest with Mr. Morrissey?

A No.

Q Did you discuss it with Mrs. Morrissey?

A No.

Q At any time following that arrest, did you send a letter to Joseph Curran and several other people regarding that arrest?

A You said prior to the arrest?

Q No. After the arrest.

A I recollect I did send a letter, yes.

Q And did you prepare that letter by yourself?

A I presume so.

Q I don't want you to presume.

A Well, I have always prepared everything by myself.

Q I show you what has been marked as Defendant's Exhibit B for identification. Is that the original of the letter we are talking about?

A Yes.

Q Is that your signature at the bottom?

A Quite so.

Q I refer you to the certified envelope. Did you re-

ceive back the certification?

A I don't remember, but I guess I did. If it is certified, I have to receive it.

Q And the address on this envelope: is that your writing?

A It looks like.

Q Did you send this letter out yourself?

A I believe I did.

Q Did you type this letter yourself?

A I am not sure about that, because I am in the habit sometimes of typing and other times I would give it to some public typist.

Q Some public typist; is that correct?

A Yes.

Q But you wrote this yourself but maybe gave it to a public typist; is that correct?

A What?

Q You gave this to a public typist?

A I am not sure. I may have.

Q As a matter of fact, didn't Mrs. Morrissey type this and make up the letter for you?

A Absolutely not.

MR. McINERNEY: I object to that.

Q Absolutely not?

GTP 18 Abrahim - direct

A Absolutely not.

MR. MINA: All right. Fine. I have no further questions, your Honor.

At this point, I will move to introduce it into evidence. Mr. Abrahim has testified it is his signature, and he sent the letter.

MR. McINERNEY: I object to its introduction into evidence. I have no questions of Mr. Abrahim.

THE COURT: Very well. Let us step to the side bar, because I am inclined to sustain the objection, but I will hear you out before I do.

(At the side bar:)

MR. MINA: He said he didn't talk to Morrissey or Mrs. Morrissey. We intend toshow that Mrs. Morrissey typed this letter, and certainly an inference can go to the jury that Morrissey knew full well what is in this letter.

THE COURT: Not on the present state of the record. That is my point to you.

Let me hear the nature of the objection. Then you respond to it, because I am inclined to sustain the objection at this point.

MR. McINERNEY: Well, of course, your Honor, whatever Mr. Abrahim said is not binding on Mr. Morrissey. That is the first thing.

Your Honor, I will go a step further. Assuming that Mrs. Morrissey did type the letter, that is still not binding on Mr. Morrissey.

THE COURT: I am not about to pass on that question now.

MR. McINERNEY: I understand, but right now there is absolutely no relevance in this lawsuit as far as Morrissey is concerned, and Morrissey is the only party in interest here. Whatever Ralph Abrahim says or anybody else said, if I wrote a letter, it wouldn't make any difference. It is just completely --

MR. MINA: We take the position that this letter goes to the very issue that is at the heart of this trial, which is whether or not there was any malice or whether James Morrissey intentionally got himself arrested to make a point.

THE COURT: Let me make a comment to you.

If the witness had indicated that he had spoken to Mr. Morrissey and that Mr. Morrissey had said that he subjected himself to criminal prosecution in July 1971 in order to establish a principle or for whatever, I would suggest that that conversation would be admissible. Your adversary may disagree.

Now, we go to the next step.

GTP 20 Abrahim - direct

The witness has just finished saying that he did not speak with Mr. Morrissey. Basically, what you are doing is seeking to impeach the witness by collateral matter.

Under the circumstances, and in view of the fact that the witness testified that he did not speak with Mr. Morrissey, I feel that to admit Abrahim's letter to Mr. Joseph Curran, after all of the fact that it is written on on July 27, 1971, on the basis of the record as it now stands would be improper.

Accordingly, I sustain the objection by counsel. If you want to add anything, you may do so. I am not saying that you might not ultimately reach a point where I might change my mind. What I am saying, on the state of the record now, this document is not admissible.

MR. MINA: We take the position for the record that the fact that the letter is dated after the incident is of no consequence, because the letter itself refers to the arrest and the reason for the arrest.

We further take the position that this is evidence that may give the jury an inference of a connection between Morrissey and Abrahim's writing of this letter.

We further take the position that it is a question of fact for the jury as to whether or not they believe Abrahim did not talk to Morrissey, since we have a letter in

GTP 21 Abrahim - direct

which he obviously indicates a purpose for which an arrest took place.

MR. McINERNEY: I believe your Honor has ruled. I have nothing further. It is collateral matter, and I don't have anything further to say at this point.

THE COURT: I think, really, you should not try to impeach your witness by collateral evidence.

Under the circumstances and, as I stated before, on the state of the record as it exists now, the objection to the offer of Defendants' Exhibit B for identification is sustained.

MR. MINA: At this point, your Honor, we must again -- and I will for the record indicate -- that we feel that this is the most important piece of evidence in this case, because of the connection that can be shown between Mrs. Morrissey and Mr. Abrahim.

We also take the position that this document will completely serve to negate or at least give the jury a question of fact as to whether Mr. Morrissey got himself intentionally arrested or there was any malice on anyone's part.

THE COURT: Let me make one point.

If you wish to call the witness back, I would suggest that I would permit you to recall the witness and show him the letter again, particularly the notation down in the lower left hand corner, and you can ask him your question on

that subject again.

I would note the notation to which you refer, which is where the dictation -- or the secretary's and the dictator's names usually appear, and it does say hm/RI.

Do you want to recall him for that purpose?

MR. MINA: Yes, your Honor.

(In open court:)

BY MR. MINA: (Continued)

Q Mr. Abrahim, I refer you to the bottom of this letter and the notation where there are the capital initials RI. Are those your initials?

A Yes, sir.

Q Next to those are the typist's initials, which are "hm"; is that correct?

A Yes.

Q Does that refresh your recollection as to who typed this document for you?

MR. McINERNEY: I object to the form of the question, your Honor. It is his witness, and I might say to your Honor that his recollection was perfectly clear that Mrs. Morrissey never did any typing for him.

THE COURT: Let us go back one step.

(To the witness:) Do you recall now, without looking at the letter, who typed that letter for you to sign?

THE WITNESS: If I did not type it, I used to have three people used to do it for me; public typist, places. One of them is a lawyer of mine. It is either one of those three have done it.

THE COURT: I see.

Do you recall specifically who did it?

THE WITNESS: No, because I had many documents.

THE COURT: Looking again at the exhibit before you, Exhibit B, you now see what counsel has pointed to?

THE WITNESS: No.

THE COURT: I ask you if that in any refreshes your recollection as to who typed the letter.

THE WITNESS: No.

THE COURT: Specifically, does it refresh your recollection that the "hm" on the letter was Hannah Morrissey?

THE WITNESS: Well, it is her initials, but she has never typed anything for me.

THE COURT: It is your testimony that Mrs. Morrissey did not type that letter for you?

THE WITNESS: She has never typed any letter for me.

Q Mr. Abrahim, just to make it clear now, it is your testimony that this is your signature; is that correct?

A Yes.

Q That is your letter?

A Yes.

Q But Hannah Morrissey never typed anything for you?

A Never. Never typed anything.

Q All right. And this is your writing on the envelope, is that correct?

A It seems that.

MR. MINA: I have no further questions, your Honor.

THE COURT: Mr. McInerney, you may inquire.

MR. McINERNEY: I have nothing at all, your Honor.

THE COURT: You are excused, sir. Thank you very much.

(Witness excused.)

MR. MINA: At this time, the defense calls Mr. Terry Lasky.

T E R R Y L A S K Y , called as a witness by the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINA:

Q Mr. Lasky, could you tell the jury what your occupation is?

A I am a private investigator.

Q And pursuant to a request from me, did you do any type of investigation regarding what has been marked Defendants'

B for identification?

A Yes; I did.

Q In regard to that, does that envelope have a meter stamp number on it?

A Yes; it does.

Q Did you, pursuant to my request, check to find out who owned that meter on July 27th, the date of that letter?

A Yes; I did.

Q Would you tell the jury what that investigation revealed?

A Yes.

The investigation revealed that the P-B number, which is the Pitney-Bowes number, 842108, was a meter number which was leased by the Carl Ally Company at 473 -- 437 Madison Avenue, New York, New York.

Q And in regard to the Carl Ally Company, did you check their employment records?

A I discussed them with someone this morning at that company.

Q And did that investigation reveal that anyone associated with this lawsuit worked there at that time?

A Absolutely.

MR. McINERNEY: I object to the question and move to strike the answer. It is hearsay, your Honor.

THE COURT: All he said was "yes" or "absolutely", and the jury heard it. I am going to let that stand.

He is going to have a problem, of course, when it comes to the next question.

MR. McINERNEY: Yes, your Honor.

MR. MINA: In that case, your Honor, may I respectfully request that we have a half-hour adjournment to get the records down here?

THE COURT: If counsel insists upon that.

MR. McINERNEY: Maybe if I heard the next question, your Honor --

THE COURT: All right. Let me have the next question asked, and before you answer it, we will wait to hear from Mr. McInerney.

Q The next question is, who was it that worked at Carl Ally at that time?

MR. McINERNEY: Does he mean everybody, your Honor?

THE COURT: No.

MR. MINA: Associated with this case.

THE COURT: Anyone associated with the plaintiff in this case? Did anyone associated with the plaintiff in this case work at Carl Ally at that time, that time being when?

MR. McINERNEY: Your Honor, I will stipulate for the record that Mrs. Hannah Morrissey was an employee of Carl

Ally up until a short time ago -- I think it was 1974.

THE PLAINTIFF: About a year ago.

MR. McINERNEY: About a year ago, your Honor, and she was employed by Carl Ally in 1971.

MR. MINA: Thankyou, Mr. McInerney.

I have no further questions, your Honor.

MR. McINERNEY: Nothing, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. MINA: Again, your Honor, we would move to introduce Defendants' Exhibit B for identification into evidence.

MR. McINERNEY: Your Honor, that corporation must have over fifteen employees. I am not prepared to -- I just object again.

MR. MINA: Your Honor, at this point I would respectfully submit that a very serious question of fact has been presented and that this now would be in the province of the jury.

THE COURT: Step to the side bar.

(At the side bar:)

MR. MINA: Your Honor, at this point, we take the position that in view of the nature of the statements made and the strong question as to who typed it and to the credibility of the witness at this point, after having

absolutely denied that Mrs. Morrissey ever did any work for him, I believe this is the strongest example of a jury question. This goes right to the credibility of Mr. Morrissey's statement that he was arrested maliciously. In fact, this letter gives the question as to whether or not he forced the arrest to make a point.

MR. McINERNEY: Your Honor, that forced the arrest? He has been a member of the union for thirty years, and this is the only thing -- if he forced it, it was the only thing they did that he wanted them to do. Even if he wanted it, he couldn't expect it. But he didn't want it, of course.

THE COURT: I suggest, again, we are in a position where you have not tied the letter to Mr. Morrissey sufficiently for me to admit it.

You have two alternatives, it seems to me, which you may not want to exercise. Mr. Morrissey is sitting in the courtroom, and it seems to me you have the right to call him to the stand.

MR. McINERNEY: Oh, yes, your Honor.

THE COURT: And ask him if he ever saw this letter, if he ever saw any copy of the letter, if he knows anything whatsoever about it, and take it one step at a time, or I notice she has absented herself this morning -- Mrs. Morrissey.

MR. McINERNEY: She has business, your Honor.

I might say, your Honor, my mother is in the hospital, as you know. She and Mr. Morrissay went up to feed my dog last night while I stayed in the city and worked on my summation all night.

THE COURT: All I can suggest is that she is not here.

MR. McINERNEY: She will be here. I don't know --

THE COURT: If counsel wishes to call her -- she had been here through the trial up until now.

MR. McINERNEY: He could have served her with a subpoena.

THE COURT: Off the record --

(Discussion off the record.)

THE COURT: Back on the record.

MR. McINERNEY: Your Honor, let me say it this way. I persist in an objection to this just as vehemently, if not more so, as there were objections to the Lucio article.

MR. MINA: Your Honor, for the record and so that the Court and the record show why Mr. Morrissey is not being called in regard to this letter is because we had already taken his deposition, at which he denied any knowledge of it. Therefore, the only way to show knowledge of it was by circumstantial evidence, which I believe at this point is sufficient to introduce that to the jury.

Mr. Abrahim has testified that it is his signature, that he wrote the letter. It is now a question of fact for the jury as to whether or not they believed he talked to Morrissey or not.

THE COURT: Basically, you are trying to impeach your witness Abrahim by a collateral matter, a writing.

I would suggest this: that the record would appear to this Court to indicate that there is a fair presumption at this juncture, in view of the record, that Mrs. Morrissey typed this letter. All right. That is the first order of business.

I think the jury could draw the inference from everything that we have in the record now that this letter was typed by Mrs. Morrissey. The question that remains is, was it done by her as an agent for Mr. Morrissey? That requires another inference beyond the first, and that is what you want the jury to draw.

In other words, you really want them, by looking to one inference, to draw another.

MR. MINA: Not at all, your Honor. I strongly suggest that there is no inference in this case. It is based on a letter that he admittedly wrote, admittedly sent to the union in the course of the union business --

MR. McINERNEY: That is Abrahim you are talking about, not Morrissey.

MR. MINA: I respectfully submit, your Honor, if I have not done it at this point, that Mr. Abrahim be declared a hostile witness.

THE COURT: I gave you the opportunity to cross-examine him.

MR. McINERNEY: You were sitting in his pocket here.

THE COURT: The Court asked certain questions which I think would be construed along the same lines. I recognized the problem, and I thought we dealt with it appropriately, without any declarations on the record.

MR. McINERNEY: Yes, sir.

MR. MINA: In that case, since the argument has been made, I take the strongest exception to the rule regarding this letter, because I think this is the crux of this whole trial and certainly relevant.

THE COURT: All right. I will take a moment, if you gentlemen wish to step aside and deliberate on the matter.

(In open court:)

R A L P H A B R A H I M , recalled.

THE COURT: Mr. Abrahim, you are recalled by the Court. I want to remind you that you are still under oath.

Mr. Abrahim, you have been present in court since you left the stand, have you not?

THE WITNESS: Yes.

MR. ABRAHIM: Yes.

THE COURT: Very well. You heard testimony that the letter that you mailed was posted through a meter leased by Carl Ally Company, a company which employed Hannah Morrissey in 1971. Would you tell this Court and jury, in your own words, how that letter, which you addressed on the envelope and which you signed, was mailed and by whom?

THE WITNESS: I don't recall these things. In fact, this letter, had it not been shown to me, I would not even recall it. If this is so, I don't know how this happened.

THE COURT: Did you give this letter to Mr. Morrissey or to Mrs. Morrissey and ask that they post it for you? Yes or no.

THE WITNESS: I don't recall that, sir.

THE COURT: Looking at the postmark and having heard the testimony which you heard, does that in any way refresh your recollection?

THE WITNESS: No, sir. I did -- I did some time before -- some years ago give something, I think, to -- I don't know who it was -- to somebody else to mail for me in this form, so I don't know. The same thing could have happened here, but I don't recollect anything like this.

THE COURT: Did you discuss the contents of this letter with James Morrissey before you sent it?

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THE WITNESS: Absolutely not, sir. I don't think he was around at that time.

THE COURT: Did you discuss the contents of this letter with Hannah Morrissey before you sent it?

THE WITNESS: No, sir.

THE COURT: Any further questions, gentlemen?

MR. McINERNEY: None for me, your Honor.

MR. MINA: Your Honor, only one question.

BY MR. MINA:

Q With whom did you discuss the contents of that letter?

A I don't recall discussing it with anybody.

MR. McINERNEY: I object to this.

THE WITNESS: I don't recall this. If --

MR. MINA: No further questions, your Honor.

THE COURT: Go ahead, sir. Do you want to finish?

THE WITNESS: I'm pretty sure. I don't think he was around.

THE COURT: You don't think he was around?

THE WITNESS: No.

THE COURT: Or you know he was not around?

THE WITNESS: I don't remember that. If he had been there, I may have had some association with him on that.

THE COURT: Did you discuss the contents of this letter with Mr. Morrissey before you sent it?

THE WITNESS: Absolutely not, sir.

THE COURT: Any other questions, gentlemen?

MR. MINA: No, your Honor.

MR. McINERNEY: No, your Honor.

THE COURT: The witness is excused.

(Witness excused.)

THE COURT: The objection is sustained.

MR. MINA: Your Honor, could I request a five-minute recess at this point?

THE COURT: Indeed you can.

Ladies and gentlemen, at the request of counsel we are taking a five-minute recess. Please do not discuss the case among yourselves. Keep an open mind on all facets of the case.

Let me suggest that questions asked by the Court are asked merely for clarification to assist you in determining what the facts are. They do not indicate that this Court takes sides in this case for one party or the other. As a matter of fact, the questions asked by the Court might have been considered as favoring one side. The ruling which the Court made might have been considered to favor the other side. Therefore, I can only suggest that I do this for the purpose of clarification, to assist you, as the triers of the facts, in determining the facts.

The jury will continue to keep an open mind on all facets of the case until it has been concluded.

We will take a ten-minute recess at this time.

(Recess.)

THE COURT: This was a little longer recess than I anticipated, but I would suggest that we have been busily engaged in preparing for the continuation of the trial.

Mr. Mina.

MR. MINA: Thank you, your Honor.

At this time, I would like to read some portions of Mr. Snow's deposition that had not been read by Mr. McInerney. Referring to the deposition of Mr. Snow which was taken on the 6th day of September 1974. Page 82, line 23.

"Q Mr. Snow, I hand you Number 1" --

For purposes of clarification, your Honor, I would indicate that Number 1 is what has been marked Plaintiff's Exhibit 4 in evidence here, the notice regarding distribution of literature.

" . . . I hand you Number 1 to look at while I am asking you some questions about it.

"You said that was put out by the National Office previously, did you not?

"A Yes.

"Q Do you know when it was put out?

"A No. A long time before this occurrence.

"Q When you say this occurrence, you mean a long time before the time Morrissey was arrested?

"A Yes.

"Q Prior to the time Mr. Morrissey was arrested, did you have any conversations with Mr. Curran about that notice?

"A No.

"Q Did you have any conversation with Mr. Wall about that notice?

"A Yes.

"Q When did you have your conversation with Mr. Wall about the notice?

"A Prior to his making it up.

"Q When was that?

"A A long time before. I can't remember the exact date.

"Q Do you remember the approximate date?

"A It was after a series of events had consequently been going on wherein we were getting peddlers coming in, selling encyclopedias and books, religious articles, people coming in asking for contributions to rather doubtable charities, and also, and most important, after we had stopped, I would say innumerable arguments and fights took place inside the hiring hall when literature was being handed out over which there was disagreement.

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"Q Prior to the time of Mr. Morrissey's arrest, on July 1, 1971, was there official literature distributed in the hall?

"A The Pilot was the only literature that was distributed in the hall.

"Q We had two bins in which The Pilot, large numbers of them, were always stored, ready for the taking by anybody who wanted one."

The remainder of that was read by Mr. McInerney, your Honor, regarding the bins.

I would now go to page 91 of Mr. Snow's deposition -- I am sorry, your Honor. It is page 90, line 20.

"Q You asked Nimmo to speak to Morrissey again; is that right?

A Yes. I said, 'Keep trying.'

"Q Now, you say Morrissey usually had done what you had asked him to do?

"A Yes. When I asked him or when other people had asked him when he was distributing literature or when anyone else was distributing literature, when they were asked to move out of the building, they usually did so.

"Q You say usually did. Were there times when he didn't move out?

"A No. There were times when he said, 'Okay, Charlie.

I won't distribute it.' He put it back in the bag and carried the bag around.

"Q I don't understand what you mean. You mean he carried the bag?

"A The flyers.

"Q And then reached into the bag?

"A That's what he was doing when he was distributing them. He said, 'I won't hand them out,' and he would put them back in the bag, and he just stayed in the union hall with the bag without distributing them."

Page 108, line 12.

"Q Did any of the officers of the union ask you to have the plaintiff arrested?

"A No, nobody. They just said -- they said just to preserve -- my general directive was to preserve the peace on the floor, do what I had to do.

"Q Did anyone in counsel's office say to you or suggest to you or direct you to have Morrissey arrested?

"A Mr. Gruber said, 'Give him a couple more shots, try to talk him into leaving, and if he does not," he said, I presume we agreed that trespass and harassment would be the charges that could be brought against him and should be brought against him.

"Q Did anyone else tell you to have Morrissey arrested?

"A No, sir."

Your Honor, at this time the defense rests.

THE COURT: Is there anything you wish to present on rebuttal?

MR. McINERNEY: No. I just wanted to make it clear on the record that your Honor would take judicial notice of the penal law, the charges brought against Mr. Morrissey and the penalty of that.

THE COURT: Yes. I have my copy of McKinney's here. I will take judicial notice of it.

MR. McINERNEY: Shall I tell you the section or hand them up?

THE COURT: No. We have the section in the back.

MR. McINERNEY: Thank you.

THE COURT: Does the plaintiff rest on his entire case?

MR. McINERNEY: Plaintiff rests, your Honor.

THE COURT: Does the defense rest on its entire case?

MR. MINA: The defense rests, your Honor.

THE COURT: Ladies and gentlemen, we have reached another point in the trial where I will take up some legal matters with counsel, which I anticipate will take about fifteen minutes. Then I am going to give them perhaps five minutes, maybe a little longer, to organize their notes for

their summations.

I would suggest at this point that we can consider that we will resume at eleven-thirty. It is now about five after eleven.

When we resume, you will hear two closing arguments: first from Mr. Mina and then from Mr. McInerney. Following the completion of the closing arguments, which we call summations, I will send the jury to lunch in the usual fashion for approximately an hour, perhaps a little more today, and then you will return and I will deliver my charge.

Following that, the case will be in your hands.

Despite the fact that you have heard all the evidence that is going to be presented, you have not yet heard the closing arguments of counsel, nor have you heard the Court's charge. Therefore, I direct that you do not discuss the case in the next twenty-five or so minutes when you are in the jury room, that you keep an open mind on all facets of the case until it has been completed and given to you following my charge.

The jury is excused until approximately eleven-thirty.

(The jury left the courtroom.)

THE COURT: Mr. Mina, the Court will hear motions from you at this time.

MR. MINA: Your Honor, at this time, on behalf of

the defendants National Martime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo, we would move to dismiss on all the grounds that were given to the Court at the end of the plaintiff's case and for the same reasons.

We would, additionally, move to strike all of the testimony of Joseph Curran, which was taken subject to connection on the question of maliciousness on the grounds that no connection has been shown between Mr. Curran and the arrest and/or prosecution of Mr. Morrissey.

THE COURT: Mr. McInerney?

MR. McINERNEY: Yes, your Honor.

I believe the record is replete with connections to Mr. Curran. My recollection of the testimony, of course, might not be as accurate as your Honor's, but it seems to me that there were witnesses that said they had advised Mr. Curran.

I believe Mr. Curran himself testified that shortly after the arrest he knew of the fact that Morrissey had been arrested, and he didn't ask anyone to drop the charges or anything else. That is one thing.

Of course, the day before the arrest, circumstantially, probably very circumstantially, but there is the testimony or the records of the telephone calls to Mr. Curran's Boca

Raton residence. So certainly, on that, I think the testimony on Mr. Curran -- it was taken subject to connection and I think we have established a connection and established, certainly, a question of fact for the jury to determine on that.

THE COURT: Let us turn to that.

The motion to strike the testimony of Joseph Curran, which was admitted subject to connection, is, on the Court's [illegible]deration of the record in this case, denied.

MR. McINERNEY: Now, your Honor.

MR. MINA: I respectfully except, your Honor.

MR. McINERNEY: With respect to the other defendants, of course, we are in a similar situation or a little different from the situation that we had with union counsel.

I put in my evidence as far as Mr. Nimmo was concerned, and I know the problems there. I think that we have established a case that would warrant taking it to the jury on all the issues. But I would offer my adversary, Mr. Mina, the opportunity -- we will offer to withdraw against Mr. Nimmo with prejudice and, again, without costs.

MR. MINA: Accepted, your Honor.

THE COURT: Very well.

Mr. Morrissey, do you concur in the application made by your counsel that the Court order that the claims, all claims against Mr. Nimmo be dismissed with prejudice and with-

out costs?

MR. MORRISSEY: Yes; I do, your Honor.

THE COURT: Very well. The Court grants the application of plaintiff's counsel, agreed to and consented to by defendant Nimmo's counsel, and orders all claims by the plaintiff against Mr. Nimmo, which are set forth in the pleadings in this case, dismissed with prejudice and without costs.

I have to rule on the motions.

Do you want to be heard further on the motions or do you want to stand on what you have said before?

MR. McINERNEY: Your Honor, I will stand on what I said before.

MR. MINA: Your Honor, on those motions, I would specifically refer the Court to the defendant Shannon Wall and again reiterate the fact we feel there is no evidence whatsoever in this case to connect Mr. Wall with the charge for malicious prosecution.

THE COURT: I have considered the matter, and I must suggest, though, I do not think the case against Mr. Wall on the malicious prosecution claim is the strongest of cases, and if there were no case against him I could appreciate your motion, but I think enough has been presented. He signed the notice; he was a high-ranking official of the union; he became aware of the arrest a day or so after it happened.

Union counsel did follow up on this matter and sought to press the prosecution, which was ultimately dismissed.

I think there is a case which has been made out against Mr. Wall, and under the circumstances I will deal with your motions as follows:

The motions to dismiss against the defendant National Maritime Union of America, Joseph Curran and Charles Snow are in all respects denied.

The motion to dismiss against the defendant Shannon Wall on the first cause of action is also denied.

The motion to dismiss against the defendant Shannon Wall on the second and third causes of action: the Court reserves decision.

Is there anything else on the motions, gentlemen, before we proceed to the matter of a special verdict form?

MR. McINERNEY: I will just make the pro forma motion, your Honor, to conform the pleadings to the proof.

THE COURT: Any objection? Any opposition?

MR. MINA: Not as far as I know, your Honor.

THE COURT: Very well.

I frankly don't know if the motion was necessary, but since there appears to be no opposition to it, the motion to conform the pleadings to the proof is granted.

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Is there anything else before we turn to the matter of the special verdict form?

MR. McINERNEY: No, your Honor.

THE COURT: Very well.

Let me give back to each of you gentlemen your proposals so you have them in front of you, and then I will read to you the ten questions I would propose to have typed.

The caption of the case, of course, will be Joseph Morrissey, Plaintiff, against the four defendants who are in the case now, the union itself and Messrs Curran, Wall and Snow.

I. On the first cause of action:

1. Did any of the defendants violate plaintiff's rights under the Landrum-Griffin Act?

I will then put, "Answer yes or no." Then I will put a line.

2. If your answer to Question 1 is No, your verdict is for defendants on this cause of action, and you should proceed to Question 6.

I will get to that shortly.

3. If your answer to Question 1 is Yes, check which defendant or defendants violated plaintiff's rights under the Landrum-Griffin Act.

Then I will list the four defendants, with a line

to the right of each.

4. If your answer to Question 1 is Yes, what were the actual damages, if any, sustained by plaintiff as a result?

And there will be a line to the right.

5. If your answer to Question 1 is Yes, what punitive damages, if any, do you wish to award?

Then a line.

II. On the second cause of action.

6. Did any of the defendants maliciously prosecute plaintiff?

7. If your answer to Question 6 is No, your verdict will be for defendants on this cause of action, and you need answer no further questions.

I will do the same on Question 6 as I did with Question 1. I will put in, "Answer yes or no."

I have already given you the next question:

If your answer is No, your verdict will be for defendants on this cause of action, and you need answer no further questions.

8. If your answer to Question 6 is yes, check which defendant or defendants you find to have maliciously prosecuted the plaintiff.

Again, the four defendants are listed in the order

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they are named in the complaint, with a line to the right of each.

9. If your answer to Question 6 is Yes, what were the actual damages, if any, sustained by plaintiff as a result?

There will be a line for them to fill in.

III. On the third cause of action.

10. If your answer to Question 6 is Yes, what punitive damages, if any, do you wish to award?

Then there is a line.

Gentlemen, without anyone conceding that punitive damages are allowable under the Landrum-Griffin Act -- and I intend to submit that matter to the jury -- or admitting anything other than you must accept my rulings as they have just been given, are there any objections to the special verdict being presented to the jury in the form which you have just heard me indicate?

MR. McINERNEY: Not by the plaintiff, your Honor.

MR. MINA: None by the defendants, your Honor.

The only thing I would request in that regard is -- and I am sure your Honor will do this -- is to advise the jury of the limit as per the complaint in this action on the cause of action.

THE COURT: What are the limits? Let's look at those

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for just a moment.

Certainly, if the jury were to go beyond any limits specified, I will tell you now that I would set aside the verdict beyond the ad damnum clause.

MR. MINA: In that case, it is not necessary, your Honor.

THE COURT: Very well.

Is there anything else before I give you a limited time to prepare your summations?

McINERNEY: Thank you, no.

MR. MINA: Nothing, your Honor. Thank you.

(Recess.)

(In open court; jury in box.)

THE COURT: Ladies and gentlemen, we come now to the stage in the case where each of the three groups here, counsel, Court and jury, will have a function to perform. Counsel will perform their function first,and that is to deliver their closing arguments to you. You will first hear from Mr. Mina, and then you will hear from Mr. McInerney.

Following the closing arguments of counsel, we will have a luncheon recess. After that, the Court will charge you on the law, which is the Court's job in the functioning of cases.

Finally, it is your turn. The jury will get the

case, and you will retire to deliberate upon it.

At this point, we will hear the closing arguments. We will hear first from Mr. Mina, on behalf of the defendants.

I might say one thing before Mr. Mina rises.

Mr. Nimmo is no longer a party in this action. As I said this morning relative to other defendants, you should not speculate or draw any inferences from the fact that Mr. Nimmo is not a party in this lawsuit. His name will undoubtedly be mentioned in the closing arguments, and that is perfectly appropriate; but when you come to deliberate relative to the various defendants, Mr. Nimmo will not be among those defendants.

Please don't speculate as to the reason why he is not before you for your consideration.

We will proceed now with the closing arguments of counsel. Mr. Mina.

MR. MINA: If it please the Court, ladies and gentlemen of the jury:

We are now reaching the end of what Mr. McInerney called a historic case. I submit to you that what is historic about this case is that we have taken four days to try a case involving a lawsuit by a man that I submit to you went out and intentionally got himself arrested.

The plaintiff inthis action is basing his action on

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what is called a malicous prosecution. The Judge will tell you what the law is on that. He bases it on one cause of action for what he calls a violation of the Landrum-Griffin Act. The Judge will tell you what that act is. It is not up to me, and it is not up to Mr. McInerney to tell you what the law is. The Judge will do that.

However, in discussing the first cause of action, the Landrum-Griffin Act, I do think I will have to explain or ask you to understand, based on the testimony, that we take a very simple position in regard to that part of the case.

Landrum-Griffin, which the Judge will tell you about, says that people in a union have certain rights that can't be infringed on by the union. Landrum-Griffin also says that the union has certain rights, and that the union can make reasonable rules relating to its rights and to the union members' rights.

In this case, the testimony, I think, has been fairly clear in regard to the fact that we are dealing with the National Maritime Union hall, a hall made up of sailors who come in off the ships, and this is their home union hall.

Again, and I said it before, we are not doctors; they are not engineers. You've got a bunch of guys who, if they are going to get into a brawl, they will get into a brawl.

The union hall is over on Seventh Avenue, and you

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have heard the testimony; you heard people walked in, there were knives and guns and this type of thing. And we have a fellow by the name of Charlie Snow that is a defendant, an ex-police lieutenant, who is head of security.

Afterall the problems they see occurring in the union hall, Charlie finally goes to somebody and says, "Hey, come on. There are fights in the union hall," and he says, "Send them outside to do it. I'm having a problem with security."

So the notice is posted.

The time -- it is your recollection that controls, but somewhere at least two, three years before this incident, a notice is posted on what they believe to be the policy for as long as they can remember: no distribution of leaflets in the union hall.

The plaintiff in this case is trying to tell you that his Landrum-Griffin rights were violated by saying to him, "Go outside and hand the stuff out. Don't start fights in here by handing it out."

He is trying to tell you -- and this is something I think you can see from the testimony that has gone in -- Mr. Morrissey is trying to go back and go back and say, "Look: I have a running battle going with the administration."

Who denies that? When I opened to you at the begin-

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ning of this case, I told you there is no love lost between Mr. Morrissey and what was the Curran administration. But no love lost does not mean that any one of these defendants went out and had him arrested.

I submit to you on the facts that you have heard that Mr. Morrissey intentionally got himself arrested to test the rule. If that is the case, and if you find that -- and I submit to you that that is exactly what ha[illegible] also submit to you that there was no maliciousness [illegible] case. This arrest took place because Mr. Morrissey wanted it to take place, because he wanted to test a rule that said he had to go outside to distribute literature.

And this is a point: Mr. Morrissey tries to make it sound like the rule was made for him. The rule was not made for him. The rule was for everybody. Nobody could distribute anything but official literature, the official organ, official union literature inside the hall.

As you heard, that was not even distributed. It was put in bins and was picked up when they came in.

In regard totha t Landrum-Griffin Act, we talk at this point about the reasonableness of what they did. Is it unreasonable in order to avoid a problem to say to someone, "Look: don't give it out in here. Go outside. You get everybody as they come into the building and therefore we have

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no problems in here."

Basically, that is what the Landrum-Griffin part is all about. As a matter of fact, that is the only thing it is about.

Mr. Morrissey would have you believe that his right to free speech was stopped because hewas told, like everyone else, to go out in front and give out the stuff.

You know, it is an interesting point. Depending on whether you buy Mr. Morrissey's story or you buy Charlie Snow's story as to whether or not this was the first time it happened -- Mr. Morrissey, if you recall -- and it is your recollection, again, that will control when you go in there, and anything that you have a question about can be read back to you -- but Mr. Morrissey's own testimony was that he had been giving this literature out for five or six weeks before this, and nobody bothered him.

Does this sound like maliciousness? As a matter of fact, I submit to you that Mr. Morrissey was let to distribute longer than anyone else would have, because of the problems he has had with the union. We didn't come in here and say, "We have never had problems with James Morrissey." There have been problems. I submit to you that those problems had nothing to do with his arrest. His arrest was the result of his wanting to test a rule.

You have been told that Joe Curran had it in for him that Joe Curran was in on the arrest. When you go inside, if you are going to say anything about Joe Curran, the one thing I will ask you to do is find one piece of evidence in this trial that shows that he had anything to do with the arrest of Mr. Morrissey, show anything.

The only exhibit, I would point out, that the defense has put into this case is this: telephone calls, and the reason we put them in is that at some point during this trial Mr. McInerney asked for a stipulation that three phone calls had been made, one the day before the arrest then and two the day of the dismissal to Boca Raton, Florida.

I think it has been shown pretty clearly that Mr. Curran was in Florida during this entire thing, first of all. Those phone calls were the only ones Mr. McInerney asked for. The reason we put the rest in, so we don't get this kind of an inference, is to show that there were other phone calls to Boca Raton, but not on dates that are important to this case.

What Mr. McInerney would have you believe is that Mr. Curran was involved because he had three phone calls that were close to the dates that something happened.

We don't know who made the phone calls; we don't know what they were about, and Mr. Curran was the president of

the union at the time, so is it really unusual that they are calling him in Florida?

Mr. McInerney would have you believe, because of those three dates, that he was in ont he arrest. I submit to you now that not one shred of proof has been given to you regarding Joe Curran.

And you want to know the reason I mention Joe Curran first? It is because the plaintiff in this case, in trying to show maliciousness, which the Judge will talk to you about, has done it, has shown ill feelings with none of the defendants except Joseph Curran.

Charlie Snow, on his deposition -- and you heard this -- referred to him as Jimmy. He kept talking about how he didn't want to arrest him. He said, "I kept telling him, 'Jimmy, please, will you leave? We are going to have to arrest you.'"

That was Charlie Snow. You heard the testimony.

Shannon Wall -- I don't know what he is doing here. Shannon Wall was secretary-treasurer. You heard he was not even around the day it happened. There has been no evidence to show any maliciousness by Shannon Wall against James Morrissey.

What they have told you is Mr. Morrissey ran against Mr. Wall in elections. That is conceded. Is that malicious-

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ness?

The reason I talk to you about Mr. Curran -- and I have to -- is because of the fact that, as I said, there was no love lost between these two. But I submit to you that there was no malice, either.

Mr. Curran never said he hated Mr. Morrissey. Mr. Curran was not even around when this happened. Yet, the plaintiff would have you believe -- and this is what he is asking you to do -- is to go and say, "Every one of the defendants that is left, curran, Snow, Wall, all had something to do with maliciously prosecuting or arresting him."

I submit to you -- and this is what you will discuss when you go inside -- that a review of the testimony will show you that not one of those defendants had anything to do with this arrest, except for Mr. Snow, who was the chief of security. That testimony will also show you in regard to how malicious Mr. Snow is, that Mr. Snow went to Mr. Gruber, who testified this morning, and said, "Stan, look: this guy won't leave. We keep asking him to leave. What do I do?"

This was in response to Jimmy Nimmo's request, "What am I going to do with him?"

They kept going down: they kept asking Morrissey, "Will you please go outside and do it."

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You know, I told you something at the beginning of this trial. This is a union of seamen. To put it in its simplest terms, this union and that administration, as far as they are concerned, couldn't have done anything worse than to call the police in on a member, because they probably would have lost more support by doing that, and they knew they would.

But what happened? James Morrissey refused to leave the hall. James Morrissey has been the opposition for a long time. What do you do with James Morrissey pushing? Do you say, "Get out"?

Do you know what kind of a lawsuit there would have been in that case? So they do something that is absolutely reprehensible to them: they call the police on a member, and they know what result that is going to be.

I submit to you that this union, no way in the world would have called the police, unless Morrissey forced them into calling the police, unless Morrissey intentionally wanted to get arrested to prove a point.

And I will tell you something that bothers me about this case: we have spent four days on a trial that resulted from an arrest which was forced by the plaintiff himself. The testimony is unequivocal that Mr. Morrissey got arrested and spent thirty to forty-five minutes, according to the

police, an hour and a half or two, according to him, in a police precinct.

You heard the District Attorney testify as to how long the arraignment took, which was two or three minutes, and you heard him testify to about twenty minutes for the trial. We are talking about what could have been the ultimate inconvenience as a result of this, of three hours of time.

And again, I go back, that three hours is only because -- and I want you to consider this when you go inside -- Mr. Morrissey forced himself to be arrested to make a point. As a result of that, Mr. Morrissey has come into our judicial system, has taken -- and you have seen the evidence -- four days of this court's time, of your time.

I happen to be very proud of what I do for a living. I happen to have a lot of respect for this system. I think that this is a case of taking advantage of that system, that this is a case of taking four days of your time, of everybody's time because of malice, not on the part of the defendants in this action but because of malice that Mr. Morrissey has for the union, and I submit that when you go over what happened in this case, that is exactly what you are going to find: no malice whatsoever on the part of any of the defendants.

What I am going to ask that you do is come back with

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a verdict for all of the defendants, and especially to show that this is not the purpose for which this judicial system is made.

Thank you.

THE COURT: All right. Mr. McInerney.

MR. McINERNEY: May it please the Court, ladies and gentlemen of the jury:

We are now approaching the final stage of this case, and it would be ingratitude on my part if I did not pause for a moment to thank you for your kind and patient attention which you have given to the evidence as we have presented it to you.

There are some who serve reluctantly, but quite obviously you have served willingly and generously, and we thank you for that, and I thank you on behalf of myself and my client.

You will recall when this trial began, the lawyers made opening statements to you, and we told you at that time that those were not evidence, but they were, in effect, promises of what we were going to show you in this case. I remind you of this now, because I am going to suggest to you that I fulfilled my promise. It is not for me to judge; you are the triers of the facts, and it is up to you to determine whether or not the evidence you heard supports the

promises made to you.

I also told you that this was an important case. It will have an impact on every member of every labor ion in this country. Your judgment on the facts reigns supreme, and your memory of them governs, not Mr. Mina's memory and not my memory.

You will recall that the first witness to take the stand was Jim Morrissey. He comes to this Court to seek redress for wrongs that he has received and suffered and for which we submit to you that he is entitled to recover.

He told you that he is a seaman. Mr. Mina said in his opening statement -- and I think he repeated it on his summation, you will recall -- something to the effect that you should bear in mind that this case involves seamen and not lawyers or doctors or engineers.

He also said on his opening statement -- and I think he repeated it again on his summation -- that those seamen would not hesitate getting into a brawl. You remember that.

Well, this is 1975 and the United States of America, and I don't know how you feel about it, but I think a good, clean U. S. seaman is entitled to the same consideration in a court of law as I am.

I think you can have a seaman that is a genuine gentleman, and you can have a lawyer who is not such a gentle-

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man.

In other words, regardless of the fact that Jim Morrissey is a seaman, I am sure you will give him the same consideration that you would give any litigant in any case you sat on as a juror.

You saw Jim Morrissey on the stand. He admitted to you that he made a mistake in his youth, and he paid the price in a reformatory. That mistake took place in 1938. I am sure that was known before at least one or two of you jurors were born, probably only a few years after the rest of you were born.

If it were up to Curran, Wall and the NMU, Jim would never live it down.

MR. MINA: Your Honor, I respectfully except. There is no evidence in this case relating to that, and I think this is an inflammatory type of remark.

THE COURT: Ladies and gentlemen, the arguments of counsel are designed to help you in considering the evidence when you go in to deliberate. It is the evidence in the case as you recall it, as counsel has said, not as counsel recalls it or as the Court recalls it, which will govern.

If counsel states something now which is not contained within the evidence, you should disregard it. If you recall that this is contained in some way within the evidence,

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you certainly should consider the evidence when you deliberate.

You may proceed.

MR. McINERNEY: When you go into the jury room to deliberate, take a look at Exhibit 5. I will read this:

"Who will lead the NMU? A convicted felon?"

Then there is an excerpt from The Pilot, which is -- this is Exhibit 21. I beg your pardon, ladies and gentlemen of the jury.

There is an excerpt from Exhibit 5, which is also in evidence, and it reads in part:

"James M. Morrissey, candidate for secretary-treasurer, has been notified that his candidacy was to be discussed, was called and the following statement read to him."

I will skip down.

"Question 8 of the questionnaire and Question 7 of the bond application form were false, in that you do have a prior conviction for armed robbery, which is a felony. Despite these misstatements, your name will appear" --

And so on and so forth.

Do you think that the defendants in this case were going to let Mr. Morrissey live down that thing that happened in the long distant past?

Take a look at those exhibits, and also take a look

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at the pardon Mr. Morrissey had, which is marked in evidence. See if you can find anything in evidence talking about that, except for the pardon itself.

Mr. Morrissey told us that ht was so embarrassed by that incident that he left home in Connecticut, right after he finished his parole, back before World War II, and he went to sea. He did that to escape his past and start fresh.

Also take a look, while you are at it, at Exhibit 24 and the information that the NMU kept on Morrissey. They kept his traffic violations, the date and the disposition, his chauffeur's licence number, his present vehicle number, his former vehicle number, a County Clerk's office check. Yet they were unable to produce for your consideration, ladies and gentlemen, the written records Mr. Snow testified were made relating to the arrest and prosecution of Jim, which began in the NMU hall on July 1, 1971.

I have digressed from the subject matter of Mr. Morrissey's testimony. We will come back to Mr. Snow later.

Mr. Morrissey told you that he began sailing in 1941. He became a full book member of the NMU in 1942. Thereafter, he joined forces with Curran in opposition to Communists in the NMU, and after the Communists had been defeated he was appointed patrolman in the Port of New York. He told us that he ran for the office of patrolman, which is

like a business agent in a shoreside union, and he won, and he ran again and he won again. But later, after serving almost four years, he resigned for personal reasons.

He told us all the jobs he had within the NMU and I won't review those, your recollection, I'm sure, is just as good as mine.

He told us that he ran for the office of patrolman against the Curran slate, and although he won the Port of New York, he told us he lost in the out ports.

He also told us that he ran for the office of secretary-treasurer of NMU in 1966, and by my recollection I think he said he got 42 per cent of the vote.

Now, he was sad that that election was not on the up and up, so he complained to the Department of Labor about the conduct of that election. About one week after the Secretary of Labor, acting on Mr. Morrissey's complaint, filed suit to set aside the election, the union took away his union book unlawfully.

I suggest to you that it was in this period that the seed of hatred and malice for Morrissey was planted by the union officials and the union itself.

Now, he told you that his union book was

taken, thrown in the drawer and he didn't see it again for 18 months. He lost all his union privileges with the loss of that book. He could not attend the meetings and he could not be a ship's delegate. He had to go to the office of the United States Attorney to have that book returned.

Now, you not only heard from Mr. Morrissey on this subject, but you also heard from Mr. Michael Hess. You remember Mr. Hess. He is the witness who told us he was the former assistant United States Attorney and he was chief of the civil division. He confirmed Mr. Morrissey's version of the illegal taking of the union book and the fact that the 1966 elections were declared illegal by District Judge Motley in this courthouse, so a new election was ordered to be held in the early part of 1969.

But see how effectively Jim Morrissey had been silenced on that occasion. Remember, he was running for a national office position, secretary-treasurer of the NMU. What chance did he have?

When they took his book, it prevented him from so much as attending union meetings for almost the entire period previous to the election. That is in the Port of New York or anywhere else.

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But even with all those roadblocks, Jim Morrissey still garnered 59 per cent of the seaman's vote here in New York, the headquarters port and the largest port in the country. He lost in areas where he was not known.

You heard the testimony admitted into evidence concerning what the defendant Joseph Curran and NMU said about Jim. I'm not going to elaborate on that. All I will say about it is that there is one expression of Mr. Curran's that was admitted into evidence in this case, and not being a seafaring man I never even heard that one before.

In my opening statement I believe I mentioned Jim Morrissey's efforts to prevent the misuse of union funds.

Now, you heard Judge Ward say that he would take judicial notice of the record in the case entitled Morrissey on behalf of the membership of NMU against Curran, Wall and others. That is that big book there and the two smaller books on the table.

The Judge did that in an effort to shorten this trial, for which we are all grateful. That means that I can tell you what happened in that case.

MR. MINA: Objection, your Honor.

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THE COURT: I would suggest that counsel can indicate the results of that case without retrying it here.

MR. MC INERNEY: That is what I am going to do here, your Honor. We have time problems here, too, your Honor.

THE COURT: Very well. I did take judicial notice of the fact that this was in the court. You can comment briefly on the results.

MR. MC INERNEY: I will, your Honor.

THE COURT: Very well.

MR. MC INERNEY: Jim Morrissey learned that the NMU officers' fund was being misused to siphon money into the pockets --

MR. MINA: Your Honor, your Honor --

THE COURT: Are you reading from a decision filed in this Court?

MR. MC INERNEY: It is in the complaint, your Honor.

THE COURT: I don't want the complaint. The complaint, as you well know, is merely a charge, just as there were charges in this case.

If there is a decision in this case, you may read from that.

The jury will disregard anything that has just been read relative to a pleading, unless judgment was granted on that pleading summarily.

MR. MC INERNEY: Shall I paraphrase it, your Honor, rather than look for it?

THE COURT: If you have the decision and you have --

MR. MC INERNEY: I haven't got the decision, but I got the results, your Honor, which is substantially the same. I can read from the judgment.

THE COURT: You can read from the judgment if you have the judgment.

I do take judicial notice that a final judgment of this Court may be considered by the jury.

MR. MC INERNEY: Upon the order of this Court, dated July 11, 1969, and the judgment entered thereon on July 18, 1969, and upon the pleadings, proceedings and proof adduced at the trial on the issue of damages held pursuant to the order of this Court on August 23, 1971 and upon the decision in writing of this Court dated July 11, 1972 and filed on January 11, 1972, it is ordered that there being no just cause for delay, the Court enter judgment in favor of the National Maritime Union of America against the NMU officers' pension plan

in the principal amount of $520,283.38 and interest in the amount of $153,939.22 for a total of $674,222.60, and it is further ordered that there being no just cause for delay, the clerk of the court enter judgment in favor of the NMU officers' pension plan against defendant William Perry in the principal amount of $222,200, with interest in the amount of $41,107, for a total of $263,307.

I will read from the following judgment, your Honor. This is a subsequent judgment of November 15, 1972 and this is in addition to the previous judgment.

"Ordered that the clerk of the court enter judgment in favor of the NMU officers' pension plan against defendant Abraham E. Freedman in the principal amount of $222,200, together with interest in the amount of $50,540.50, making a total of $272,740.50."

I should tell you that Mr. Morrissey did not get one cent personally for his efforts, except to the extent --

MR. MINA: Objection. Your Honor --

MR. MC INERNEY: Your Honor, that is part of the case certainly.

THE COURT: If it is part of a decision, if it is part of a judgment, you may quote from it.

MR. MC INERNEY: All right.

THE COURT: Otherwise I suggest that you not.

MR. MC INERNEY: All right, I will withdraw it. I apologize to the Court, to Mr. Mina and to the jury.

THE COURT: The jury will disregard the last remark of counsel, which he is withdrawing.

MR. MC INERNEY: Now, these actions that we have mentioned to you were under the Landrum-Griffin Act.

You will recall that I told you in my opening statement that deep and binding malice, the hatred the union officials and NMU bore toward Jim Morrissey grew out of a long history of efforts on Jim Morrissey's part to keep the union on the straight and narrow, to prevent the misuse of union funds, to see to it that union elections were conducted honestly and according to Hoyle and the provisions of the Landrum-Griffin Act were observed by the union officials.

I have done my best to keep my promises to you.

Now, I told you that we would show you what happened to Jim Morrissey for taking a brave and courageous stand against a powerful, tyrannous and repressive

leadership of the NMU.

On July 1, 1971, Mr. Morrissey was trying to express his ideas by peacefully passing out leaflets in the union hall. It was his hall and he had a right to be there. But the officials cooked up another scheme to remove himfrom the hall and they honed from the union. They didnot want him around. His ideas were dangerous for them.

You saw Mr. Morrissey and you had the opportunity to observe him while he was testifying. Does he strike you as the type of person who deserves the treatment he has gotten from the NMU, Curran, Wall and Snow?

I should mention to you here that Mr. Snow had been removed from the officers' pension plan.

You may recall Snow's testimony on the subject. He said he was not only not an officer, but he was not a member.

Morrissey told us that he, Morrissey, was a member for over 30 years. He told us he was familiar with union policy. He told us that it was not the union policy that was reflected in that notice, which is Exhibit 4, which was signed by Mr. Wall.

I don't want to say too much to you about

Mr. Wall's testimony. You saw him, you observed him, you heard what he had to say about how the notice was drawn up and when it was drawn up. To my mind, all I can say is -- and I don't want you to be swayed by this, your judgment and your recollection -- but either Mr. Wall was confused about the whole thing, or this was something that was cooked up just for Morrissey's arrest.

Now, let's return for a moment to Jim Morrissey.

He told us that Snow told the police officer that he wanted to show him something in the book. He told us, you recall, that Snow was a former police lieutenant, took one of the police officers into his inner office just for that purpose. Mr. Morrissey said that when Snow emerged from the room with the police officer, he announced, "Nimmo will be the complainant."

He said he saw the notice. He admits he saw the notice posted, but he says he disregarded it and he disregarded it because he knew it was not union policy. He also knew, he said, that it was invalid for other reasons as well.

He told us that on July 1, 1971 he had not been given written specific charges, he was not given an adequate opportunity to prepare a defense, he was not

afforded a hearing within the union --

MR. MINA: Your Honor, at this point, I would respectfully object. Counsel is reading straight from theLandrum-Griffin Act.

MR. MC INERNEY: Your Honor, that is the testimony of Mr. Morrissey on the stand.

THE COURT: If that is the testimony, you may read it.

The jury's recollection of what the testimony is will govern. If the jury does not recall that this testimony was read, they should disregard the comments.

MR. MC INERNEY: Absolutely, your Honor, or they can ask to have it read at the appropriate time.

THE COURT: Yes, indeed.

MR. MC INERNEY: What did they do? They simply called the police and had Mr. Morrissey carted away.

You heard the police officers, one of whom testified by deposition. Both those police officers supported Mr. Morrissey's version of exactly what happened. They did not act on their own.

In fact, officer Tuciarone, and he is the police officer that testified by deposition, when asked this direct question, "When you say arrested by

complainant, you mean that the complainant made a civil arrest?" he made this answer, "Arrested and charged by the complainant, yes. I assisted in the arrest."

Then you heard the assistant district attorney, Mr. Fishman, tell you that no one told him that the NMU hall was private and not public. That fact is important in one of the charges made against Mr. Morrissey, the charge of disorderly conduct.

The disorderly conduct charge, in fact, was dismissed on that ground and you can take a look at Exhibit 13 when you go into the jury room. And while you are at it, you might look at Exhibit 14, where it reads on the bottom of the form that says, "Arrested by" and there is a box for officer, a box for complainant and complainant is checked, officer is blank.

Now I am going to say a couple of words about Mr. Snow's testimony now.

As I mentioned, he had formerly been a police officer and retired with the rank of lieutenant. He knew what was going on.

He said he had the law of criminal test practices and disorderly conduct typed up on a paper of some sort. What do you think that was all about?

But more importantly, I would like you to

think carefully about what I mentioned to you earlier, just what is going on in this case when the union maintains a dossier on a man like Morrissey, when it appears there is a personal file or a file of everything about Morrissey, when Mr. Snow testifies he made a written report of this very incident of July 1, 1971, an incident concerning which they, and I am talking about the union, the union, knew that there was litigation and then that written report is not produced here for you to consider.

Under such circumstances, I suggest to you, ladies and gentlemen, that you should draw every possible inference in favor of Jim Morrissey.

Of course, we have some telephone records. Mr. Mina told you about them in his summation, also. Records of a hot line between New York and Joe Curran's home in Boca Raton. A couple of calls on July 20, 1971, the day Mr. Morrissey was discharged, one on the eve of Mr. Morrissey's arrest, and there are a few other calls a few days before. Nobody remembers what those calls were about, nobody comes and takes the stand and tells you what was said by whom and to whom.

Now, as I asked you on the opening, when you go into the jury room just use your good commonsense. You can do a little reading between the lines.

If you saw someone come through that door and there were no windows in this room and that person was dripping wet, you could conclude fairly that it was raining outside. You don't have to see the raindrops themselves. And 999 times out of a thousand your conclusion would be right.

Now, do the same thing here.

We have no tape recordings of what went on up in those fancy offices on the sixth floor of the union. If we did and if Judge Ward admitted them into evidence, we would turn them on and let us listen to them.

But we don't really need that here. It's been a case with a lot of details, but it basically is really a simple case.

Union counsel appeared, and you can look at Exhibit 16, they appeared when Mr. Morrissey appeared on July 20 in the criminal court, the day all charges against Mr. Morrissey were dismissed, so what was union counsel doing here?

Look at Exhibit 16. They wanted Morrissey incarcerated, or as they say put in the slam, get him out of here.

Now, I told you I was not going to dwell on all the things Mr. Curran said about Jim Morrissey and I

am not going to. You know what he said. Your memory on it is just as good as mine. If you have any doubts about it, ask it to be read and it will be read to you.

But one thing I ask you to consider is the clear attack on Jim when they say Mrs. Morrissey is a Trotskyite.

What did he mean by that?

You may, I suggest, infer from that remark, which was, incidentally, probably the most gentle phrase that Mr. Curran used, that Jim Morrissey was associated with the Trotskyites. Right?

You can probably go even further and infer that Mr. Curran intended to convey the idea that Mr. Morrissey loved the Trotskyites. But that is for you to determine. Those are inferences from the facts that are in evidence.

But how would you like it if the top man in your organization went around telling everyone that your husband or your wife was a Trotskyite? Would you like that?

Now, I suggest to you that Jim Morrissey has shown you that his rights to assemble freely with his brother union members and to express his views, arguments

and opinions in his union hall was impaired and, of course, the Court will tell you what the law is, but I suggest to you that in impairing these rights, the defendants, NMU, Joseph Curran, Shannon Wall and Charles Snow, violated Mr. Morrissey's rights under the Landrum-Griffin Act.

Of course, that is for you to determine. You are the sole judges of the facts.

They say to you now that there is a notice. Now, that might be bothering somebody. But you just can't slap up a notice on the wall and deprive somebody of their rights that they have under the law. They can't do that.

Now, that notice did not prevent Morrissey or any other union member in this entire country from peacefully passing out literature in his union hall, the hall built and maintained with his funds. That being so, there was, in fact, no probable cause for Jim Morrissey's arrest on July 1, 1971 and no just reason to prosecute him then or to continue the prosecution until July 20, 1971.

I say to you that that was, just on those facts alone, without anything else, they didn't have any probable cause, that was a malicious prosecution. But

that is for you to determine.

You heard it said that this arrest of Jim Morrissey was no more than a traffic ticket. What was it? A few minutes here, a few minutes there, a thousand dollars in lawyer's fees. So what? A seaman has to get slapped with a thousand dollars of lawyer's fees. He can't pay them. He hasn't paid them is his testimony. But he still got the bill. You heard him say that.

Now, no more serious than a traffic ticket. You think about that.

The charges were for criminal trespass and disorderly conduct. You know that Jim Morrissey had that ancient problem with the law. You know that this was opening up an old wound and giving him a new arrest record.

What does that do to your credit rating? What does it do to your whole life?

You know that the defendants were thinking about that very same thing when they hauled Jim Morrissey away on July 1, 1971.

You remember that I mentioned to you in the opening that on the date of the arrest that the malice and hatred of the defendants for Jim Morrissey was then in full bloom on that date. The seeds planted back in

1966 had matured and, believe me, ladies and gentlemen, it is for you to determine whether or not they were in full bloom.

Mr. Mina said the ultimate inconvenience was a few minutes here and a few minutes there.

Now, what the defendants didn't tell you is that Jim Morrissey could well have gone to jail for the penalty for those charges brought against him in the criminal court. Mr. Morrissey could have gone away on the criminal trespass charge for a period up to 90 days and be fined $500. He could have gone away 15 days on the disorderly conduct charge.

Mr. Snow was a former police lieutenant. You can draw the inference that somewhere along the line, maybe in those telephone conversations, that instructions were given to Snow by the other defendants.

I say to you that Jim Morrissey suffered damages and we will ask you to award him fair and just compensation for those damages, those injuries he suffered.

What are you going to think about there?

I am going to suggest to you, ladies and geneltmen, if you agree with me and agree that Mr. Morrissey was wronged here, you can use your common sense

and award him a fair and just compensation.

What do you consider? You consider the injury to his reputation, the injury to his reputation: you consider the humiliation and mental anguish --

MR. MINA: Your Honor, at this point, I certainly believe Mr. McInernev is telling the jury what your Honor's function is and that is what constitutes damages.

THE COURT: Yes. The elements of damage are a matter of law.

MR. MC INERNEY: All right, your Honor.

THE COURT: And I will deal with that in my charge.

MR. MC INERNEY: Now, in addition to the compensatory damages, we are going to ask you to give punitive damages.

What does that mean? The judge will tell you all about that, but I am going to ask you to do this, ladies and gentlemen.

If you find there was malice and that this was done maliciously to Jim Morrissey, all we are going to do is to ask you to make that punishment stiff enough so that union officials, not only in NMU, but in all unions of this country will not do this again.

How can you do that? By awarding money damages.

I thank you.

THE COURT: Ladies and gentlemen, you have heard the closing arguments of both counsel.

We are going to take a recess now and we are going to resume at 2 p.m., at which time the Court will deliver its charge.

Please do not discuss the case among yourselves nor remain as you come and go in the courthouse, the courtroom within the hearing of anyone else who may be discussing the case.

Finally, although you have now heard all the evidence and you have heard both the summations, I suggest we still have the charge ahead of us on the law and, therefore, I want you to keep an open mind on all facets of the case until the charge has been completed and the case given to you, which will be this afternoon.

The jury is excused and directed to return at 2 p.m.

Counsel are excused as well.

(Luncheon recess)

GTP

JAMES M. MORRISSEY

versus 72 Civil 2363

NATIONAL MARITIME UNION
OF AMERICA et al.

New York, N. Y.

April 17, 1975

AFTERNOON SESSION

2:00 p.m.

THE CLERK: The Court is about to charge the jury. Any spectators wishing to leave the courtroom will do so now or will remain seated until the completion of the Court's charge.

Will the marshal please lock the door.

CHARGE OF THE COURT

THE COURT: (Ward, D. J.) It is the custom in this court that the juror seated in seat number one -- in this case Mr. Gaillard -- will serve as foreman. His function will be to take the vote in the jury room and to report your verdict when, as and if it has been unanimously arrived at.

In addition, in the event you require anything after you retire to deliberate on this case, the foreman will write out your requirements in the form of a note and send the note out via the marshal, who will attend you, to me.

In this case -- and I shall refer to it more later --

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I have determined that it would be best for the jury to be furnished with a verdict form. The form contains ten questions which I have prepared and have reviewed with counsel. The form is set up in such a way that you will proceed beginning with Question 1 from question to question, following the instructions which are contained on the form and answering whatever questions you deem appropriate, taking them one at a time.

Mr. Foreman and ladies and gentlemen of the jury:

First, I want to express the thanks of the Court to each of the seven of you who remain with us for your faithful devotion to your duties in this case. It is obvious to me that you have paid close attention during the three and a half days that the case has been on trial before you. That, of course, is what you promised you would do, and you have done what you promised you would do.

We come now to that portion of the trial where you are instructed on the law applicable to the case. You will then retire for your final deliberations.

You have heard all of the evidence introduced by both sides, and through arguments of their respective attorneys you have learned the conclusions which each party believes should be drawn from the evidence presented to you.

As jurors, it is your duty to determine from all

GTP 3

the evidence that you have heard and the exhibits that have been received in evidence what the facts are. You are the sole, the exclusive judges of the facts. In that field you are supreme, and neither I nor anyone else may invade your province.

On the other hand, and with equal emphasis, I charge you that you are bound to accept the law of the case as it is given to you in this charge and in any instructions that I have given to you during the course of the trial. Whether you agree with the law as given to you by the Court or not, you are bound by it.

The process by which you arrive at a verdict is, first, to determine from all the evidence and the exhibits what the facts are; and, second, to apply the law of the case, as I give it to you, to the facts as you have determined them to be. The conclusion thus reached will be your verdict.

I have endeavored to preside impartially and not to express an opinion, one way or the other, as to what you should find the facts to be. In the course of the trial, it has been necessary for me to rule on the admission of evidence and on motions made with respect to the applicable law. You must not infer from any of my rulings or from any questions I may have asked of witnesses or from anything I have said during the course of this trial that I hold any views for or

GTP 4

against any of the parties to this lawsuit. Any views of mine would, in any event, be totally irrelevant, since it is your recollection of the evidence and your determination of the issues of fact which control.

At times during the trial I have sustained objections to questions which were asked without permitting the witness to answer, and on occasions when an answer was made, I instructed that the answer be stricken from the record and be disregarded.

You may not draw any inference from an unanswered question nor may you consider testimony which has been stricken, in reaching your decision. The law requires that your decision be made solely upon the competent evidence before you. Such items as I have excluded from your consideration were excluded because they were not leaglly admissible. Arguments or contentions of counsel are, as I have said on occasion, not evidence.

In deciding this case, you must consider only the evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts. One is direct evidence, such as the testimony of an eye witness, the testimony of a person who was a participant in a conversation or who observed an event. The other, indirect or circum-

GTP 5

stantial evidence, the proof of circumstances from which the existence of certain facts may or may not be inferred.

As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the evidence in accordance with what has been presented, both direct and circumstantial.

The jury's verdict in this, a civil case, will be for t e plaintiff if the plaintiff proves his case by a preponderance of the evidence. In making the factual determination on which your verdict will be based, you may consider only the exhibits which have been admitted in evidence and the testimony of the witnesses as you have heard it in this courtroom or as there has been read to you testimony given on examination before trial or deposition.

Under our rules, an examination before trial, or a deposition, so called, is taken under oath and is entitled to equal consideration by you, notwithstanding the fact that it was taken prior to trial and outside the courtroom.

Stipulations, or agreements of facts stated or concurred in by counsel for the parties, are considered evidence in this case, and stipulations or agreements of fact are to be accepted as true to the extent of the particular stipulation.

The law does not, however, require you to accept all

GTP 6

of the evidence I have admitted, even though it may be competent. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine the degree of weight you choose to give to that particular witness' testimony.

The testimony of a witness may fail to conform to the facts as they occurred because he is intentionally telling a falsehood, because he did not accurately see or hear that about which he testified, because his recollection of the event is faulty or because he has not expressed himself clearly in giving his testimony.

There is no magic formula by which one may evaluate testimony. You bring with you to this courtroom all the experience and the background of your own daily lives. In your affairs, as you go about your business, you determine for yourselves the reliability or the unreliability of statements made to you by others. The same tests you use in your everyday dealings are the tests which you apply in your deliberations.

I frequently say to jurors that you bring your common sense to the courtroom. I expect you to take your common sense with you into the jury room for your deliberations, and I trust that when you come out of the jury room your common sense and your good conscience will accompany you.

GTP 7

The interest or lack of interest of any witness in the outcome of the case, the bias or prejudice of a witness, if there be any, the appearance, the manner in which the witness gave his testimony on the stand, the opportunity that the witness had to observe or note the facts concerning which he testified, the probability or improbability of the witness' testimony when viewed in the light of all the evidence in the case are all items to be taken into consideration in determining the weight, if any, you will assign to that witness' testimony.

If such considerations make it appear that there is a discrepancy in the evidence, you will have to consider whether the apparent discrepancy may not be reconciled by fitting the two stories together. If, however, that is not possible, you will then have to determine which of the conflicting versions you will accept.

If you find that any witness has wilfully testified falsely as to any material fact, the law permits you to disregard completely the entire testimony of that witness, on the principle that one who testifies falsely about one material fact is quite likely to testify falsely about everything.

You are not required, however, to consider such a witness as totally unworthy of belief. You may, if you choose,

GTP 8

accept so much of his testimony as you deem true and disregard what you feel is false.

By the processes which I have just described to you, you, as the sole judges of the facts, determine which of the witnesses you believe, what portion of their testimony you accept and what weight you will give to it.

The plaintiff, James Morrissey, and the defendant Shannon J. Wall, testified in person at this trial. The depositions of Joseph Curran and Charles Snow were read to you. Each of these four individuals is what we call an interested witness. They are parties to the lawsuit. That a witness is interested in the outcome of the case does not mean that he has not told you the truth. It is for you to determine from the demeanor of those witnesses whom you have seen on the stand and from such other tests as your experience dictates whether or not his interest is such that a particular party whose testimony has been presented in court is likely, unintentionally or otherwise, to color his testimony.

You are at liberty, if you deem it proper under all the circumstances to do so, to disbelieve the testimony of such a witness, even though it is not otherwise impeached or contradicted. However, you are not required to disbelieve such a witness, and you may accept all or such part of his testimony as you deem desirable and reject such part as you

deem unworthy of acceptance.

I instruct you that you are not to draw any inference for or against any party because of the absence of Mr. Curran and Mr. Snow.

This is a civil case. The burden of proof rests on the plaintiff. The burden of proof means burden of persuasion. The plaintiff has the burden of proof on every essential element of the case. That means that it must be established by a fair preponderance of the credible evidence that the claims that the plaintiff makes are true.

The credible evidence means the testimony or exhibits that you find worthy to be believed. A preponderance means the greater part of such evidence. That does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence; that is, its convincing quality, the weight and effect that it has on your minds.

The law requires that in order for the plaintiff to prevail, the evidence that supports his claims must appeal to you as more nearly representing what took place than that opposed to his claims. If it does not,or if it weighs so evenly that you are unable to say that there is a preponderance on either side, then you must resolve the particular question in favor of the defendants, for then the plaintiff

GTD 10

will not have carried the burden of proof by a fair preponderance of the burden of persuasion.

It is only if the evidence favoring the plaintiff's claims outweighs the evidence opposed to them that you can find in favor of the plaintiff.

We have in the law what we call presumptions. Presumptions are deductions or conclusions which the law requires the jury to make under certain circumstances in the absence of evidence or circumstances in the case which leads the jury to a different concrete conclusion.

A presumption continues to exist only so long as it is not overcome or outweighed by evidence or circumstances in the case to the contrary. But unless and until so outweighed, the jury should find in accordance with the presumption.

For example, it is presumed that things have happened according to the ordinary course of nature and the ordinary habits of life and that the law has been obeyed. If the proof should fail to establish any essential element of a plaintiff's claim against any defendant by a preponderance of the evidence against that defendant, the jury should find for that defendant.

If in the course of your deliberations your recollection of any part of the testimony should fail, or you

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should find yourselves in doubt concerning my instructions to you on the law, it is your privilege, if you so desire, to send out a note and to request that you be permitted to return to the courtroom for the purpose of having such testimony or instructions read to you. I will try to comply with your requests as promptly as possible.

In this action, the plaintiff seeks damages which he alleges resulted from an infringement of his rights under the Landrum-Griffin act, Section 411, Title 29, U.S. Code, which states:

"Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of the meetings: Provided,That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractural obligations."

The law gives a union the right to make reasonable

gtlk 12

rules.

I charge you as a matter of law that on July 1, 1971, the notice against distributing unauthorized literature in the union hall which had been posted earlier was not at that time, that is, on July 1, 1971, duly promulgated by the union.

If you find that on July 1, 1971 plaintiff's activities created an immediate danger of seriously interfering with the union's function, you may find that prohibiting those activities was reasonable.

On the other hand, if you find that on July 1st, 1971 plaintiff's activities did not create an immediate danger of seriously interfering with the union's functioning, you may find that prohibiting those activities was not reasonable.

It is the duty of you, the jury, to make a determination as to whether or not, based on the facts as you find them, the union or any individual defendant breached its obligations under this section by infringing the rights of the plaintiff to meet and assemble freely with other union members and express his views, arguments and opinions.

In his first cause of action -- and there are three causes of action here -- plaintiff also alleges that defendants violated Section 411(a) of Title 29 of the U.S. Code, also a portion of the Landrum-Griffin Act.

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That section provides, "No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues by such organication or by any officer thereof unless such member has been (A) served with written specific charges, (C) given a reasonable time to prepare his defense, · · afforded a full and fair hearing."

And also Section 411(b) which provides, "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

If you find that any defendant's action in causing Mr. Morrissey to be removed from the union hall was "discipline" and restricted or inhibited his rights as a member of the union, you may also find for plaintiff on his first cause of action.

If you find that defendants, or any of them, violated either of these two sections of the Landrum-Griffin Act, you will find for plaintiff on his first cause of action.

Plaintiff also seeks damages which he claims resulted from his prosecution for the offenses of criminal tresspass in the third degree, which carries with it maximum penalties of three months imprisonment and a fine of $500

gtlk 14

and disorderly conduct, which carries with it a maximum penalty of 15 days imprisonment and a fine of $250.

The first question for you to determine is whether a particular defendant initiated or furthered the criminal prosecution.

It is not disputed that the complaint, on the basis of which plaintiff was arrested and charged on July 1, 1971, was made by James Nimmo. The defendant National Maritime Union may be held for Mr. Nimmo's act in making this complaint if you find that Mr. Nimmo was an employee of the National Maritime Union and made the complaint in the course of and within the scope of his employment.

Any one or more of the other defendants you will be considering, that is, Joseph Curran, Shannon J. Wall and Charles Snow, may be held for Mr. Nimmo's act in making the complaint if you find that he or they instructed Mr. Nimmo to make the complaint and that without this instruction Mr. Nimmo would not have made the complaint.

You may also hold a particular defendant responsible for furthering the prosecution of the criminal action if you find that he knew about it and authorized it after Mr. Nimmo made the initial complaint.

If you find that any one or more of the defendants is not responsible for either James Nimmo's act or the

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further prosecution of the charges, your verdict will be for that defendant, and as to that defendant you will proceed no further.

On the other hand, if you find that one or more of the defendants is responsible for Mr. Nimmo's act or for the further prosecution of the charges against Mr. Morrissey, you must next consider whether there was probable cause for believing Mr. Morrissey guilty of the offenses charged.

In order to recover against any defendant, the plaintiff must prove that at the time the prosecution was initiated or furthered, the defendant you are considering did not have probable cause to believe the plaintiff guilty of criminal trespass or disorderly conduct and that in initiating or furthering the prosecution the defendant you are considering acted maliciously.

Whether probable cause existed depends upon whether a reasonably prudent person would have believed plaintiff guilty of the offenses charged on the basis of the facts known to that defendant at the time the prosecution was initiated or which he then reasonably believed to be true. The fact that the particular defendant you are considering personally believed plaintiff guilty is not enough if a reasonably prudent person would not have believed so.

On the other hand, the fact that plaintiff was

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discharged by a judge of the Criminal Court after a preliminary hearing is not evidence that any defendant lacked probable cause at the time the prosecution was initiated.

The question on the issue of probable cause is not whether the plaintiff was, in fact, guilty or innocent or the particular defendant you are considering was, in fact, mistaken or correct, but whether on the facts as they reasonably appeared to the particular defendant you are considering a reasonably prudent person would have believed the plaintiff guilty.

The first offense of which plaintiff was accused by the defendants was disorderly conduct, Section 240.20 of the New York Penal Law. That is the first offense of which the plaintiff was accused.

That section states as follows:

"A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

"1. He engages in fighting or violent, tumultuous or threatening behavior; or

"2. He makes unreasonable noise; or

"3. In a public place, he uses abusive or obscene language, makes an obscene gesture; or

"4. Without lawful authority, he disturbs any

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lawful assembly or meeting of persons; or

"5. He obstructs vehicular or pedestrian traffic; or

"6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

"7. He creates a hazardous or physically offensive condition by an act which serves no legitimate purpose.

Disorderly conduct is a violation.

According to this statute, the conduct to be forbidden must be such that breach of the peace is imminent or might reasonably be expected or intended to flow from such conduct. The conduct must cause inconvenience, annoyance or alarm to a substantial segment of the public.

The defendant Charles Snow contends that at the time the charges were made, the facts as they appeared to him were that Mr. Morrissey was causing agitation and disturbance in the union hall which Mr. Snow believed would lead to fighting or violent behavior.

If you find that the facts appeared to defendant as he claims and that a reasonably prudent person would have believed that those were the facts, your finding will be that he had probable cause for believing plaintiff guilty and your verdict will be for the defendant.

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If you find that the facts appeared to defendant otherwise than as he claims or that it was not reasonable for him to have believed that those were the facts, your finding will be that the defendant did not have probable cause to believe the plaintiff guilty and you will proceed to consider whether the defendant acted maliciously in initiating the prosecution.

The second offense of which plaintiff was accused was criminal trespass.

New York Penal Law, Section 140.10 states, "A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders."

Defendants contend that at the time the charge was made on July 1, 1971, the facts as they appeared to them were that they were entitled to exclude Mr. Morrissey from the union hall for expressing his views by passing out literature in the hall and that it was unlawful for him to remain there and to continue to pass out literature when they asked him to cease and desist or otherwise to leave.

If you find for plaintiff on this claim, you must decide, relative to each defendant, whether that defendant believed that it was unlawful for Mr. Morrissey to remain

gtlk 19

in the union hall after he had been asked to leave and whether a reasonably prudent person would have so believed.

If you find that the facts appeared to defendants as they claim and that a reasonably prudent person would have believed that these were the facts, your finding will be that he had, that is the defendant you are considering, had probable cause for believing the plaintiff guilty and your verdict will be for that defendant.

If you find that the facts appeared to defendant otherwise than as he claims or that it was not reasonable for him to have believed that those were the facts, your finding will be that defendant did not have probable cause to believe plaintiff guilty and you will proceed to consider whether defendant acted maliciously in initiating the prosecution.

Evidence was introduced that the defendants were advised by their attorneys that the facts detailed to the attorneys by the defendants constituted an offense. That evidence was admitted on the issue of malice, which I will come to in a few minutes. But it can not be considered by you on the question of probable cause.

A mistake as to what facts constitute an offense under the law can not justify prosecution even though the mistake was reasonable and made in good faith. Only

gtlk 20

if you find the facts known to a defendant or which he reasonably believed when the prosecution was initiated or furthered to be or to have appeared to defendant to be those which I have already outlined for you, can you find that there was probable cause, and in making that determination you may not consider views as to the law given to a defendant by his attorney.

In order to recover against any defendant on plaintiff's second cause of action, that is, the action for so-called malicious prosecution, plaintiff must prove both lack of probable cause and malice on the part of the defendant you are considering.

A prosecution is initiated maliciously if it is initiated for a purpose other than bringing an offender to justice, out of personal ill will or in reckless disregard of the rights of the person accused. By reckless disregard of the rights of the person accused is meant initiation of the prosecution without any reasonable ground for belief that he is guilty.

If you find that a defendant did not have probable cause for believing plaintiff guilty at the time he initiated or furthered the prosecution, you may, though you're not required to, infer from that fact alone that that particular defendant acted maliciously.

gtlk 21

Defendants claim that before starting the prosecution against plaintiff attorneys were consulted. As I have told you, you may not consider that fact, if you find it to be a fact, on the issue of probable cause. But if you find that a defendant consulted an attorney before starting or furthering the prosecution, that he stated to that attorney all of the pertinent facts then known to him or which he then believed to be true and that the attorney advised him that those facts constituted offenses, you may consider those facts as tending to negate malice.

You may consider all the evidence, including circumstantial evidence, in determining whether any defendant initiated or furthered the criminal proceedings out of personal ill will or in reckless disregard of plaintiff's rights or to frighten him or intimidate him.

Of course, you must decide what weight to give to circumstantial evidence, just as you must decide what weight to give all the evidence.

If you find that a defendant did not act maliciously, your verdict must be for that defendant, even though you find that he did not have probable cause to believe plaintiff guilty.

If you find that plaintiff has proved both that defendant did not have probable cause and that defendant

gtlk 22

acted maliciously, your verdict will be for plaintiff and you will proceed to consider the question of damages, to which I will address myself in a moment or two.

In order to recover against the defendent union on his second cause of action, that is the action for malicious prosecution, plaintiff must prove that at the time he made the complaint, Mr. Nimmo acted as an employee of the union, did not have probable cause to believe that plaintiff was guilty of criminal trespass or disorderly conduct and that he acted with malice.

You may also find against the union if you find against Joseph Curran, Shannon J. Wall or Charles Snow and if you further find that their actions were taken in their capacity as officers or employees of the union.

The fact that I will now charge you on the law of damages must not be taken as an indication that your verdict should be for plaintiff. It is for you to determine whether plaintiff has proved by a preponderance of the evidence either his Landrum-Griffin claim or his claim for malicious prosecution, or both.

If you find that he has not proved either, you need go no further, your verdict will be for defendants. Only if you find that plaintiff has proved one or the other, or both, against one or more of the defendants will you consider

gtlk 23

the measure of damages.

If you find for plaintiff on his first cause of action, the Landrum-Griffin cause of action, plaintiff is entitled to recover the actual damages which he directly sustained as a result of the violation of his rights under the Landrum-Griffin Act. These damages are called compensatory damages, because they are intended to compensate the plaintiff for injury done by the infringer.

You will award plaintiff such amount as in the exercise of your good judgement and common sense you find fair and just compensation. In this regard, plaintiff may only recover from damages directly and proximately resulting from violations of the Landrum-Griffin Act, such as lost earnings.

Plaintiff argues that he has suffered injury to his reputation as a result of defendants' actions. If you so find, you may award some compensation for this injury.

If you find for plaintiff on his second cause of action, that is, the action claiming malicious prosecution, he is entitled to recover for the actual damage directly sustained as a result of the criminal prosecution. You will award plaintiff such amount as in the exercise of your good judgement and common sense you find is fair and just compensation for the injury to plaintiff's reputation and

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gtlk 24

his humiliation and mental anguish resulting from the criminal prosecution, injury and inconvenience to plaintiff caused by his arrest. Expenses incurred by the plaintiff in defending the criminal prosecution are also included as damages here.

You may not consider the expenses of bringing this present action. You may not duplicate damages for Mr. Morrissey.

If you find that any defendant or defendants are liable to Mr. Morrissey on the first cause of action, you will assess damages with respect to that cause of action separately from any other cause of action. The same is true with regard to the second cause of action for malicious prosecution. You may not compound or duplicate the damages from one cause of action to another.

The damages I have discussed with you so far are called compensatory because they are intended to compensate plaintiff for the injury done. In addition, plaintiff asks that you allow him punitive damages.

Punitive damages are allowed to punish defendant for his malicious or reckless act and, thus, to deter others from the commission of like offenses.

Plaintiff asks that you award him punitive damages on both his first and second causes of action.

gtlk 25

Punitive damages relating to his second cause of action are sought in his third cause of action.

If you find for plaintiff on his first cause of action and if you further find that the defendant you are considering acted with actual malice or reckless or wanton indifference to the rights of plaintiff, you may award punitive damages.

To find a verdict for plaintiff on his second cause of action, you must, as I have previously stated, find that the defendant you are considering acted maliciously, but that finding does not require that you award plaintiff punitive damages on that cause of action. You may, if in the exercise of your discretion, you find that the degree of the particular defendant's malice or recklessness warrants your doing so, award plaintiff punitive damages. But if you further find that defendant mistakenly, but in good faith, believed that he had probable cause, you must take that fact into consideration in exercising your discretion as to the allowance of punitive damages or the amount of such damages if you decide to allow them on the second cause of action.

There is no exact rule by which to determine the amount of punitive damages. The amount you fix as punitive damages need bear no particular ratio or relationship to the

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amount you award as compensatory damages. You may fix such amount as you find in your sound judgment and discretion based on all the facts before you will serve to punish the particular defendant you are considering and deter others from the commission of like offenses.

In reporting your verdict, if you find for plaintiff, you will state separately the amount fixed by you as compensatory damages and the amount, if any, fixed by you as punitive damages.

Any verdict that you give here must be unanimous.

I would like to point out that you should not enter the jury room with any preconceived pride of opinion. You should not be unwilling to be convinced by an intelligent argument with your fellow jurors.

Each juror, of course, has to answer to his and her own conscience. Each has to decide this case for himself and herself. But in doing so, you should be willing to consider the views of your fellow jurors and talk it out and try yourbest to reach a unanimous agreement.

This is an important case. Every case is important to the parties who are concerned with it. It is important to the plaintiff and to the defendants and it is your obligation to decide this case solely on the evidence and on the law as I have charged it to you.

I have prepared a form of verdict which contains ten separate questions. Your foreman will receive this form before you leave the jury box. You will take the form into the jury room and depending on how you determine the case, the answers will be made accordingly.

I have completed my charge. It will see counsel at the side bar.

I would ask our alternate juror, Mrs. Dugan, to go to the jury room to reclaim all of her belongings because she will be leaving after I send the jury in to deliberate.

Mrs. Dugan, if you would get your belongings and return to the jury box, I should like to talk to you after the jury has retired.

I will see counsel at the side bar.

(At the side bar.)

THE COURT: Gentlemen, are there any exceptions? First the plaintiff.

MR. McINERNEY: No, your Honor.

THE COURT: Second, the defendants.

MR. MINA: Yes, your Honor.

We would take exception to that portion of the charge which has charged the jury that the notice was not legitimately promulgated on the grounds that that would be a question of fact for the jury and not a matter of law.

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THE COURT: I thought the record was so clear on that. I think I used the word duly or some similar word. I don't remember the word legitimately.

MR. MINA: So the Court understands my reason for it, we are taking the position that this rule is one that was instituted in New York because of the problem. It was not a national rule and, therefore, not required to be duly promulgated through the national office.

THE COURT: You have your exception on that.

Any other exceptions?

MR. MINA: Yes, your Honor.

On the charge regarding Section 411(a)(5) only because we take the position as we did on the motions that this case has no applicability to that section. It is not a suspension or an infringement as contemplated by the Landrum-Griffin Act.

THE COURT: Of course, we go on with the words disciplining and others.

MR. MINA: Yes, your Honor.

THE COURT: You have your exception.

Are there any other exceptions?

MR. MINA: Yes, your Honor.

As regards damages, we except to that portion of the charge which allows the plaintiff damages for loss of

gtlk 29

reputation. If that existed, we respectfully take the position that his remedy would have been a suit for defamation.

THE COURT: You have your exception.

Are there any other exceptions?

MR. MINA: No, your Honor.

THE COURT: Are there any requests for supplementary instructions from the plaintiff?

MR. McINERNEY: No, your Honor.

MR. MINA: We would only ask that the Court incorporate our request to charge as requests and, therefore, take exception to any --

THE COURT: To any portions of the requests which you submitted which were not charged in haec verba.

MR. MINA: Yes, Your Honor.

THE COURT: Very well.

Anything else, gentlemen?

MR. McINERNEY: No, your Honor.

MR. MINA: Nothing else, your Honor.

Thank you, your Honor.

(In open court.)

THE COURT: Gentlemen, with your leave, I will have the clerk hand the special verdict form to the foreman. You each have a copy.

Is that agreeable?

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MR. MINA: Yes, your Honor.

MR. McINERNEY: Yes, your Honor.

THE COURT: Very well.

Would you now place the deputy marshal under oath to take care of the jury.

(A marshal was duly sworn by the clerk of the court.)

THE COURT: The jury is instructed to proceed to the jury room and commence its deliberations.

Ladies and gentlemen, I appreciate if you begin your discussions when all six of you have settled around the table and that if one or another of you has to absent himself or herself privately during the course of those deliberations that you suspend your deliberations and then resume them when all are present. The point of that is we want to have all of the jurors participate in all of the deliberations.

The jury, jurors one through six, are instructed to proceed to the jury room and commence their deliberations.

(At 3:00 p.m., the jury retired to the jury room to deliberate upon a verdict.)

THE COURT: I would like to take this occasion to thank and excuse Mrs. Dugan, our sole remaining alternate juror.

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Your service here has been appreciated by the Court and also, I am certain, by counsel and the parties.

It is a real responsibility that jurors have when they are called upon to deliberate in cases which are inportant to their fellow human beings. We know that it is an inconvenience for jurors to come from their homes and jobs to be here with us.

You have sat through this trial and are in the frustrating position of now having to learn about the verdict after the fact from your jurors since you will be around next week to learn just what happened here. But on my own behalf, Mrs. Dugan, and on behalf of counsel and on behalf of the court in which I serve, I want to thank you for your service in this case.

MRS. DUGAN: You're welcome. It was a very fine experience for me.

THE COURT: The clerk will give you your instructions.

(Alternate juror excused.)

(At 4 o'clock p.m. a note was received from the jury.)

THE COURT: Gentlemen, I have just received a note from the jury, which we will mark Court's Exhibit 1.

The note reads as follows:

"The jury would like reread:

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"A. Those parts of the Court's charge to the jury stating the circumstances under which the union itself could be held accountable on either charge.

"B. Those parts of James Nimmo's testimony dealing with his relationship with the defendant union and the duties and authority of his position of Master at Arms."

"The jury would like to examine:

"A. The constitution of the defendant union submitted in evidence (amended through 1969)."

We will mark this note as Court's Exhibit 1.

At this time I would like counsel's permission to send into the jury the exhibit to which reference is made here, the constitution of the union, which is Plaintiff's Exhibit 25 in evidence.

Is there any objection to that, gentlemen?

MR. McINERNEY: No, your Honor.

MR. MINA: No objection, your Honor.

THE COURT: Very well.

The clerk will give that to the marshal.

(Court Exhibit number 1 was marked for identification.

(At 4:05 p.m., a note was received from the jury.)

THE COURT: We have a second note, which we will mark Court's Exhibit 2.

"The jury would like to know whether it has any

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power to allocate damages, if any, among the various defendants against whom judgment is rendered or is allocation automatic and equally apportioned?"

(Court Exhibit number 2 was marked for identification.

(At 4:35 p.m. in open court, in the absence of the jury.)

THE COURT: Gentlemen, I have been engaged in a criminal sentence.

Have you had an opportunity to confer relative to the two notes which were received from the jury a short while ago?

MR. MINA: Yes, your Honor.

MR. McINERNEY: Yes, your Honor.

THE COURT: May I have your report on the outstanding matters?

It seems to me that there are really three outstanding matters that we had.

The first was relative to the portions of the Court's charge, which were asked for by the jury. I have those here and I would ask if you wish to have the Court read them or whether you want the court reporter to read them.

MR. McINERNEY: I think it would be better if the Court read them, if it won't be too much of an inconvenience,

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your Honor.

THE COURT: I would be more than pleased to.

The second matter has to do with the parts of Mr.Nimmo's testimony dealing, as the jury says here, with his relationship with the defendant union, the duties and authority of his position of Master at Arms.

Have you agreed on the portions of the testimony which should be read by the reporter?

MR. McINERNEY: There is none, your Honor.

MR. MINA: There is no such testimony, your Honor.

THE COURT: I see. Very well. I will so advise the jury.

The third matter which is contained in the jury's second note had to do with allocation.

I understand you have agreed that that question should be answered as follows:

If you decide to award punitive damages against any defendant, what is the proportion you award against that defendant?

Then I have a place for each defendant and I would suggest a percentage sign next to that defendant's name and place.

Is that agreeable to you?

MR. McINERNEY: Your Honor, I would think if they

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put in an amount it might be better than a perce tage.

THE COURT: Do you want it in dollars or percentage?

MR. McINERNEY: In dollars, your Honor.

MR. MINA: I think that would be easier.

THE COURT: What we will do, if it is agreeable, is bring the jury out and we will modify questions five and ten with something we will call five (a) and ten (a).

Now we have another note from the jury.

"May the jury examine, one, the literature submitted in evidence as having been distributed by plaintiff separately identified as A, distributed on July 1, 1971, B, previously distributed.

"2. The record of the arrest, specifically including a form showing by whom the arrest was made and complaints filed."

We will mark that Court's Exhibit 3.

(Court's Exhibit number 3 was marked for identification.)

MR. MINA: Nobody put in evidence the material Mr. Morrissey was distributing.

MR. McINERNEY: It is in as part of number 12.

THE COURT: Why doesn't counsel look at that and what I propose to do, as soon as you have agreed on that, is

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to bring out the jury and take care of all of the outstanding matters.

MR. MINA: Your Honor, we agree that this is the material requested by the jury (handing).

THE COURT: Counsel have agreed, I gather, that the three exhibits are Plaintiff's Exhibit 2, Plaintiff's Exhibit 12 and Plaintiff's Exhibit 14, all of which are in evidence.

Is that correct, gentlemen?

MR. McINERNEY: Yes, your Honor.

MR. MINA: Yes, your Honor.

THE COURT: All right. Marshal, bring in the jury, and I willtake care of all of the matters at this time.

(Jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

We have received three notes from the jury. We were in the process of answering the first when the second came and in the process of answering the second when the third came, and it is my intention now to answer all three notes at this time.

Taking the notes in order, I have marked as Court's Exhibit 1 your first note, which asks as follows:

"The jury would like reread those parts of the Court's charge to the jury stating the circumstances under

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which the union itself could be held accountable on either charge."

I shall read the portions of my charge which cover that matter.

In his first cause of action, plaintiff also alleges that defendants violated Section 411(a)(5) of Title 29, U.S. Code, which is also know as the Landrum-Griffin Act.

That section provides:

"No member of any labor organization may be fined, suspended, expelled or otherwise disciplined, except for non-payment of dues by such organization or by any officer thereof, unless such member has been, (A), served with written specific charges, (B) given a reasonable time to prepare his defense, ((C) afforded a full and fair hearing."

We then go on to Section 411 (b).

"Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or affect."

If you find that any defendants' action, in causing Mr. Morrissey to be removed from the union hall, was "discipline" and restricted or inhibited his rights as a member of the union, you may also find for plaintiff on his first cause of action.

If you find that defendants, or any of them,

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violated either of these two sections of the Landrum-Griffin Act, you will find for plaintiff on his first cause of action.

I have read one of the two sections of the act, Section 411 (a) and also 411 (b).

I would now read an additional portion of Section 411.

In this action, the plaintiff seeks damages which he alleges resulted from an infringement of his rights under the Landgrum-Griffin Act, Section 411, Title 29, U.S.C. which states:

"Every member --"

Let me see counsel at the side bar.

(At the side bar.)

THE COURT: Gentlemen, I have reviewed this matter and as I was reading I reconsidered the jury's note and I would ask your consent to my telling the jury to disregard what I have read up until now and then I will proceed to read only a short portion of my charge which has now been shown to both of you.

MR. MINA: Yes, your Honor.

MR. McINERNEY: Yes, your Honor.

THE COURT: It is agreeable?

MR. McINERNEY: What I am troubled about, your Honor,

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could they become confused by the fact that they couldn't be held for their violations by just reading this?

THE COURT: It would seem to me that it would be wisest just to read this portion, because this is the only portion that relates directly to holding in the union, and on reconsideration I feel that this is what they want.

MR. McINERNEY: I think you are right, your Honor. But if we could agree to delete on the second cause of action from it, you see, and just say --

THE COURT: No, I have to read what I said.

Do all counsel agree, then, I can tell the jury to disregard everything I have just said and then I will read the material I have just shown to you?

MR. MINA: Yes, your Honor.

MR. McINERNEY: Yes, your Honor.

(In open court.)

THE COURT: Ladies and gentlemen, in thinking about your note and your request, I think that it is your request that I read a different portion of my charge.

What I just read to you was a portion of the charge but I do not believe on reflection that it is responsive to the question in your note.

Therefore, I will direct you to disregard what I have just read as a response to your note and I will re-

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another portion of the charge which I believe is what you requested.

In order to recover against the union on his second cuase of action, plaintiff must prove that at the time he made the complaint, Mr. Nimmo acted as an employee of the union, did not have probable cause to believe that plaintiff was guilty of criminal trespass or disorderly conduct and that he acted with malice.

You may also find against the union if you find against Joseph Curran, Shannon J. Wall or Charles Snow and if you further find that their actions were taken in their capacity as officers or employees of the union.

Is that satisfactory, gentlemen?

MR. McINERNEY: Yes, your Honor.

MR. MINA: Your Honor, just to clarify a point, could we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. MINA: I would respectfully take the position that reading it in two sentences makes it sound as though Nimmo needed malice and no probable cause, but if it is any of the other three they don't need it.

I respectfully take the position that this would be a very important point in their determinations that they

understand they still have to find malice and lack of probable cause as to those three, also.

THE COURT: I believe the matter has been covered. I suggest you read for the moment what I have read to the jury.

(Pause.)

MR. MINA: I think it is very deceptive.

THE COURT: I will tell them if they want the entire charge read back, they may have it.

MR. MINA: Your Honor, what I am saying reading just this one charge make it sound to the jury like if they find that someone did something, they don't have to go into malice or probable cause at this point on it.

THE COURT: Do you have some requested language that you wish added?

(Discussion off the record.)

MR. MINA: I would take the position that having this read at this point, this argument as to these gentlemen applies equally to Curran and Wall, because it sounds like they don't have to find malice or probable cause to get through then to the union.

MR. McINERNEY: We agreed on this particular language in chambers and took some time in doing it.

THE COURT: Gentlemen, I am going to tell the jury

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that this is a portion of the charge, that they must consider the entire charge and if they wish any other portions read back, that will be done at their request.

MR. McINERNEY: Your Honor, on this, there is none in Nimmo's testimony.

(In open court.)

THE COURT: Ladies and gentlemen, I have read only a small portion of my charge because I thought that was the portion which was responsive to your question.

However, I want you to keep in mind the entire charge, and in the event you require either the entire charge or other portions of the charge read back to you, that will be done promptly at your request.

You understand that.

The jury all shake their heads in the affirmative.

Thank you, gentlemen. We will proceed now with the remaining requests by the jury.

Turning back to Court's Exhibit 1, your second request was for those parts of James Nimmo's testimony dealing with his relationship with the defendant union and the duties and authority of his position of Master at Arms.

The thing that took most of the time from the time your first note came out to the time you were called into the courtroom was that counsel and the court reporter reviewed

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Mr. Nimmo's testimony have carefully and have reported back to me that there is nothing in Mr. Nimmo's testimony which would be responsive to your request.

Is that Correct, gentlemen?

MR. McINERNEY: Yes, your Honor.

MR. MINA: Yes, your Honor.

THE COURT: The third branch of your first note was to examine the constitution of the defendant union which was admitted in evidence.

That exhibit was sent into the jury room shortly after the note was received.

Turning now to your second note, which I have marked Court's Exhibit 2.

"The jury would like to know whether it has any power to allocate damages, if any, among the various defendants against whom judgment is rendered or is allocation automatic and equally apportioned?"

The jury should not make any apportionment of compensatory damages if any compensatory damages are awarded, and those would be the damages, if any, which you might award in response to question four and question nine.

However, if you decide to award punitive damages against any defendant which would be in response to five and ten, you may allocate the particular portions of that award

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among the defendant or defendants who you find to have acted in a manner which would give rise to an award of punitive damages.

So, Mr. Foreman, you may, for a 5-A and a 10-A, wish if punitive damages are awarded to note the name or names of the defendants, if any, against whom such an award is made and the respective separate amounts, if any, of the awards which you wish to make against those defendants. That would be on the awards, if any, made under question 5 and question 10.

Do you understand that, ladies and gentlemen?

THE FOREMAN: Yes, your Honor.

THE COURT: The jury have all shaken their heads in the affirmative indicating they have.

The final note from the jury, which I have marked Court's Exhibit 3, requests certain evidence.

Counsel have gone through the exhibits which are in evidence and have agreed that the evidence called for under your third note is Plaintiff's 2 in evidence, Plaintiff's 12 in evidence and Plaintiff's 14 in evidence.

Is that correct, gentlemen?

MR. McINERNEY: That's correct, your Honor.

MR. MINA: Yes, your Honor.

THE COURT: And at this time I hand those three

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exhibits to our deputy clerk with the instructions that she hand them directly to the foreman.

Ladies and gentlemen, I have now endeavored to answer all of the questions contained in your three notes.

I would apologize for any problems which might have arisen in connection with your very first request and in the event you would like any further or additional material from the charge, I know you will send out a note in that respect.

The Court would mention just once again that the portion of the charge read was only a portion and the jury should consider the entire charge in connection with its deliberations.

The jury is excused to continue their deliberations.

Thank you.

(At 5:10 p.m., the jury returned to the jury room to continue to deliberate upon a verdict.)

(At 5:25 p.m., a note was received from the jury.)

(In open court; jury present.)

THE COURT: Good afternoon again, ladies and gentlemen.

We received another note from the jury, which I have marked Court's Exhibit 4 for identification.

The note is in two parts and we are going to try

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to respond to both.

"A. The jury believes that the portion of the charge read referred only to the second cause of action and that further comments in regard to the culpability of the union itself were made in discussion of the first cause of action. Could this portion be reread?"

That is the portion which related to the first cause of action. At least, that is the way the Court interpolates it.

I have gone over the matter and within the framework of the charge I have found certain material and would hope that the material which I will now read to you will be responsive to your question. In the event it is not, when you retire to the jury room to resume your deliberations, I will be available to any further questions which you send out.

I am addressing myself now, ladies and gentlemen, to the portion of the charge relating to the first cause of action.

In this action, plaintiff seeks damages which he alleges resulted from an infringement of his rights under the Landrum-Griffin Act, Section 411, Title 29, U.S. Code, which states:

"Every member of any labor organization shall have

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the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractural obligations."

The law gives the union the right to make reasonable rules.

I charge you as a matter of law that on July 1st, 1971, the notice against distributing unauthorized literature in the union hall which had been posted earlier was not at that time duly promulgated by the union.

If you find that on July 1st, 1971 plaintiff's activities created an immediate danger of seriously interfering with the union's functioning, you may find that prohibiting those activities was reasonable.

On the other hand, if you find that on July 1, 1971

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plaintiff's activities did not create an immediate danger of seriously interfering with the unions functioning, you may find that prohibiting those activities was not reasonable.

It is the duty of you, the jury, to make a determination as to whether or not, based on the facts as you find them, the union, or any individual defendant, breached its obligations under this section by infringing the rights of the plaintiff to meet and assemble freely with other union members and express his views, arguments and opinions.

In his first cause of action, plaintiff also alleges that defendants violated Section 411 (a)(5) of Title 29, U.S. Code.

That section provides:

"No member of any labor organization may be fined, suspended, expelled or otherwise disciplined, except for non-payment of dues, by such organization or by any officer thereof unless such member has been (A) served with written specific charges, (B) given a reasonable time to prepare his defense, (C) afforded a full and fair hearing."

Turning to 411(b):

"Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

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If you find that any defendant's action in causing Mr. Morrissey to be removed from the union hall was "discipline" and restricted or inhibited his rights as a member of the union, you may also find for plaintiff on his first cause of action.

If you find that defendants, or any of them, violated either of these two sections of the Landrum-Griffin Act, you will find for plaintiff on his first cause of action.

The jurors noted a second question:

"B. Could the Court explain specifically the phrase 'as an employee of' 'in their capacity as officers of and like phrases used in these portions of the charge to the jury, specifically including whether acts to be considered so taken must have been within the scope of an individual's authority?"

I shall try to do that.

I charge you that an employer, in this case the union, is not responsible for the act of its employees unless the act is in furtherance of the employer's business and within the scope of the employee's authority.

An act is within the scope of an employee's authority if it is performed while he is engaged generally in the business of his employer to which he was assigned or

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if his act may be reasonably said to be necessary or incidental to such employment.

The employer need not have authorized the specific act in question.

If you find that a person within the scope of his authority and in furtherance of his employer's business either wilfully or recklessly caused injury to the plaintiff, you will find the employer responsible for such act. Even though you find the employee's act was reckless or wilfull, the employer is nonetheless responsible for the act if you find that it was performed in furtherance of the employer's business and within the scope of his authority.

That completes the supplemental portion of the charge, which I will give you in response to your second question.

I would remind you again that if I have not responded to the particular matter which concerns you, I will be remaining here to await a further note from you and will attempt to respond to your further notes as promptly as possible.

The jury is excused and directed to resume their deliberations.

(At 6 o'clock p.m., the jury returned to the jury room to continue to deliberate upon a verdict.)

MR. MINA: For the record, would the record note that I take the same exceptions as were taken on the original charge.

THE COURT: Yes.

I will note for the record that I read a portion of the original charge to which you had excepted. I felt despite your exception it was incumbent upon me to read the charge as originally given, and I recognize that you continue your objection as originally made.

Is there anything else, gentlemen?

MR. McINERNEY: No.

MR. MINA: Thank you, your Honor.

(At 6:30 p.m. in open court in absence of the jury.)

THE COURT: I have received a note from the jury, "A verdict has been reached."

I don't think it necessary to mark that note. Do you, gentlemen?

MR. MINA: No, your Honor.

MR. McINERNEY: No, your Honor.

THE COURT: Will you have the marshal bring in the jury.

(Jury present.)

THE COURT: Good evening, ladies and gentlemen.

I have received a note from the jury. The substance

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of the note was that a verdict had been reached.

Miss Kruger, will you take the attendance of the jury and then we will take the verdict from the jury.

(Jury roll called; all present.)

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: It has.

THE CLERK: What is your verdict:

On the first cause of action, did any of the defendants violate plaintiff's rights under the Landrum-Griffin Act? Yes or no.

THE FOREMAN: Yes.

THE CLERK: Two. Against which defendants. National Maritime?

THE FOREMAN: Yes.

THE CLERK: Joseph Curran?

THE FOREMAN: Yes.

THE CLERK: Shannon J. Wall?

THE FOREMAN: Yes.

THE CLERK: Charles Snow?

THE FOREMAN: Yes.

THE CLERK: What were the actual damages, if any, sustained by plaintiff as a result?

THE FOREMAN: $500.

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THE COURT: How much?

THE FOREMAN: $500.

THE CLERK: What punitive damages, if any, do you wish to award?

THE FOREMAN: $220,000.

THE CLERK: On the second cause of action --

THE COURT: Just one moment.

Mr. Foreman, has the jury apportioned the $220,000 among the four defendants?

THE FOREMAN: It has, your Honor.

THE COURT: Would you indicate now what that apportionment is?

The National Maritime Union?

THE FOREMAN: $50,000, your Honor.

THE CLERK: Joseph Curran?

MR. FOREMAN: $100,000.

THE CLERK: Shannon J. Wall?

THE FOREMAN: $60,000.

THE CLERK: Charles Snow?

THE FOREMAN: $10,000.

THE CLERK: On the second cause of action, did any of the defendants maliciously prosecute plaintiff? Yes or not.

THE FOREMAN: Yes.

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THE COURT: Go down to question 8.

THE CLERK: Which defendant or defendants do you find to have maliciously prosecuted plaintiff?

National Maritime Union?

THE FOREMAN: Yes.

THE CLERK: Joseph Curran?

THE FOREMAN: Yes.

THE CLERK: Shannon J. Wall?

THE FOREMAN: Yes.

THE CLERK: Charles Snow?

THE FOREMAN: Yes.

THE CLERK: What were the actual damages, if any, sustained by plaintiff as a result?

THE FOREMAN: $3,000.

THE COURT: $3,000?

THE FOREMAN: Yes.

THE CLERK: The third cause of action, what punitive damages, if any, do you wish to award?

THE FOREMAN: $110,000.

THE COURT: Have you decided to apportion the $110,000 against the respective defendants?

THE FOREMAN: We have, your Honor.

THE CLERK: National Maritime Union?

THE FOREMAN: $50,000.

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THE CLERK: Joseph Curran?

THE FOREMAN: $25,000.

THE CLERK: Shannon J. Wall?

THE FOREMAN: $15,000.

THE CLERK: Charles Snow?

THE FOREMAN: $20,000.

THE CLERK: And so say you all.

THE COURT: Mr. Mina, do you wish to have the jury polled?

MR. MINA: Yes, your Honor, please.

THE COURT: All right.

Ladies and gentlemen of the jury, you have heard your foreman give answers to all of the questions. You are now going to be asked, beginning with the foreman, whether the answers which we will repeat at this time, constitute your verdict.

The answers are as follows:

The jury finds that all four of the defendants violated plaintiff's rights under the Landrum-Griffin Act; that plaintiff's actual damages under the first cause of action were $500 and that plaintiff's punitive damages under the first cause of action were $220,000 which the jury has apportioned as follows:

National Maritime Union, $50,000; Joseph Curran,

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$100,000; Shannon J. Wall, $60,000; Charles Snow, $10,000.

On the second cause of action, the jury has found that all four of the defendants maliciously prosecuted the plaintiff and you awarded $3,000 actual damages and then on the third cause of action you awarded $110,000 in punitive damages allocated as follows:

National Maritime Union, $50,000; Joseph Curran, $25,000; Shannon J. Wall, $15,000; Charles Snow, $20,000.

Miss Kruger, will you now query of the foreman and each of the jurors whether that is their verdict.

(Each juror, upon being asked, "Is that your verdict?" answered in the affirmative.)

THE COURT: At this time I would ask the foreman to hand to Miss Kruger the form.

I would like to thank and excuse the jury at this rather early hour of the evening.

Ladies and gentlemen, I never tell a jury whether I agree or disagree with their verdict, but I do indicate to juries whether or not I feel that they have been conscientious in the performance of their duties.

It was apparent to me through these four days of trial, during the course of which you listened to testimony and heard depositions read and exhibits presented and during the course of your deliberations this afternoon, beginning

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at approximately three o'clcok and for three-and-a-half hours, during which time you sent out a number of notes indicating to the Court that you were seriously considering various issues in the case, it has been apparent to me that this jury has been conscientious and diligent in the performance of its duties.

I want to thank each and every one of you for your service to the court and wish each of you good luck as you leave tonight.

Miss Kruger will give you your instructions. I think the instructions are that you need not come in tomorrow, but that you are directed to return following the weekend on Monday.

Would you instruct the jury, Miss Kruger.

THE CLERK: Return Monday morning at 9:00 a.m. in room 109.

THE COURT: The jury is excusedwith the thanks of the Court.

MR. McINERNEY: May I extend my thanks as well, your Honor.

MR. MINA: Your Honor, I would like to thank the jury as well.

THE COURT: I will do it for all of you.

(Jury excused.)

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THE COURT: Are there any motions which counsel wish to make at this time?

MR. MINA: Yes, your Honor.

At this time on behalf of the defendants National Maritime Union, Curran, Wall and Snow, we would move to set aside the verdict as against the weight of the evidence.

We would also move to set aside the verdict on the grounds of excessiveness.

THE COURT: Mr. McInerney?

MR. McINERNEY: Your Honor's charge indicated the punitive aspect of these damages. It has to have no relationship at all to the compensatory damage.

I don't know.

Are you speaking to the compensatory damages or the punitive damages or both?

THE COURT: I don't know the compensatory damages, which are in the amount of $500 in violation of the Landrum-Griffin Act --

MR. MINA: We obviously are not referring to the compensatory damage.

THE COURT: They would seem certainly within the realm of reason based on my charge, $500 under the Landrum-Griffin Act and $3,000 under malicious prosecution.

So you are addressing yourself to the punitive

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damages, which, in view of my charge, would aggregate $330,000.

MR. McINERNEY: Yes, your Honor.

As to those --

MR. MINA: Your Honor, I misunderstand something or I take exception to that.

It is my understanding that that would be exactly a duplication. If anything, it would be the higher figure, which is $220,000.

MR. McINERNEY: Oh, no, your Honor.

THE COURT: Mr. McInerney?

MR. McINERNEY: Your Honor, I would think that there are two separate causes of action here and the way the questions were presented to the jury -- now, on the compensatory damages, very clearly they broke them up. But on the punitive damages, under separate causes of actions, they were separate questions presented and with different numbers.

Now, if the numbers had been the same, there might be some discrepancy, but it would seem to me that these are certainly things that were considered by the jury and I would think that the evidence fully supports them.

THE COURT: I would suggest that we reserve on this motion.

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Clearly I charged the jury that on compensatory damages there was not to be a duplication.

On punitive damages, I think it is appropriate if you wish to brief this, together with the matter of counsel fees, which remains a matter for the Court.

So may I suggest that on the motion which is addressed to the punitive damages, the Court will reserve decision.

I don't think that I would be inclined to reduce the punitive damages, assuming for the moment I find them to be in the aggregate of $220,000.

I leave open the question of whether there are separate aspects of punitive damages and I will permit you gentlemen to brief them. It may well be that the aggregate of punitive damages is what you have indicated, Mr. Mina, which is $220,000, that in itself being a very substantial sum of money.

I would suggest that we have some sort of briefing schedule for any post-trial briefs which you would like to submit.

Mr. Mina, you have made the motion. I suggest you indicate what briefing schedule would be most convenient to you.

MR. MINA: Your Honor, could I respectfully suggest

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two weeks?

THE COURT: I don't find that unreasonable.

Mr. McInerney?

MR. McINERNEY: Your Honor, I would like to have three. If we could make it three, I would appreciate it. I have a couple of matters in the court of appeals next week.

MR. MINA: Three is fine.

THE COURT: I accede to your request.

You know what the issues are here. I think you should exchange briefs.

MR. McINERNEY: All right. Do you want an answer and reply?

THE COURT: No, I think one.

If you want to do it this way, I will go along with you.

I would go along with two weeks for Mr. Mina, a week after that for Mr. McInerney to answer and another week after that for you to reply if you wish, Mr. Mina.

MR. MINA: Fine, your Honor.

THE COURT: Is that agreeable?

MR. MINA: Yes, your Honor.

THE COURT: Let me set that schedule with firm dates.

gtlk 62

All post-trial motions can be included within the briefs I have indicated should be filed.

I will direct that the defendants serve and file their post-trial briefs directed to the motion which has just been made and the matter of counsel fees by Thursday, May 1 at 5:00 p.m., that the plaintiff serve his answering brief by Thursday, May 8th, and that the defendants serve their reply, if any, or notice to the Court that they do not intend to reply by Thursday, May 15, at 5:00 o'clock.

All briefs should be served and filed no later than Thursday, May 15, at 5:00 p.m.

Is that agreeable, gentlemen:

MR. McINERNEY: It is, your Honor.

MR. MINA: Yes, your Honor.

THE COURT: Is there anything further?

MR. McINERNEY: Not from the plaintiff, your Honor.

MR. MINA: That's all, your Honor.

THE COURT: There being no further business pending before the Court, Court is adjourned.

MR. McINERNEY: Thank you.

MR. MINA: Thank you, your Honor.

* * *

PLAINTIFF'S REQUESTS TO CHARGE

Charge Number One

In this action plaintiff seeks damages which he claims resulted from an infringement of his rights to assemble freely with his brother union members and express his views, arguments and opinions in his union hall concerning the conduct of the officers of NMU and issues concerning the NMU and its membership and he also seeks damages which he claims resulted from his prosecution for the crime of disorderly conduct and criminal trespass.

There are several defendants each of whom denies that he, or in the case of NMU, it, was responsible for the initiation of the prosecution.

Plaintiff had a right to assemble freely with his brother union members and express his views, arguments and opinions in the NMU hall concerning the conduct of the NMU officers and issues concerning the NMU and its membership. That right was guaranteed by the First Amendment of the United States Constitution and by the Landrum Griffin Act.

In 1959, the Congress of the United States enacted

a law, commonly called the Landrum Griffin Act. That Act contains what is known as a "Bill of Rights of Members of Labor Organizations" and that Bill specifically provides:

> "Freedom of speech and assembly. - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments and opinions ***" (Title 29 USC 411 (a) (2))

The Act continues:

> "Safeguards against improper disciplinary action. - No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

If you find that a defendant did interfere with the plaintiff's rights to meet and assemble freely with other members and to express any views, arguments and opinions and that the plaintiff's rights guaranteed under the Landrum Griffin Act were infringed your finding will be for the plaintiff on the first cause of action against such defendant. On this cause of action you need not consider whether defendants acted maliciously.

Charge Number Two

If you find for the plaintiff, he is entitled to recover the actual damages sustained by reason of the defendants' infringement of his rights. You will award him such amount as in the exercise of your good judgment and common sense, you find fair and just compensation for the injury to plaintiff's reputation, his humiliation and mental anguish resulting from the defendants' infringement, and the injury and inconvenience to the plaintiff caused by defendants' infringement together with all lost earnings and expenses which were incurred as a result thereof.

These damages are called compensatory because they are intended to compensate the plaintiff for the injury done by the infringement.

Charge Number Two

In order to recover on his second cause of action, plaintiff must prove that a defendant initiated the prosecution against him and that at the time the prosecution was initiated such defendant did not have probable cause to believe the plaintiff guilty of criminal trespass or disorderly conduct.

Charge Number Four

The fact that a defendant personally believed plaintiff guilty of the charges leveled against him is not enough if a reasonably prudent person would not have believed so. The question on the issue of probable cause is not whether plaintiff was in fact guilty or innocent, or defendant was in fact mistaken or correct, but whether on the facts as they reasonably appeared to defendant, a reasonably prudent person would have believed plaintiff guilty.

One of the crimes of which plaintiff was accused was criminal trespass. The elements of that crime are:

> "A person enters or remains unlawfully in or upon a premises when he is not licensed or privileged to do so." (Penal Law § 140.00)

A second crime, the crime of disorderly conduct, was later added. The elements of that crime are:

> "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof.
>
> "He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse." (Penal Law § 240.20 [6])

Charge Number Five

The NMU may be held for Nimmo's act in making the complaint if you find that Nimmo was an employee of the NMU and made the complaint in the course of and within the scope of his employment, and if you further find that Nimmo had no probable cause for the complaint.

Charge Number Six

Any one or more of the other defendants (Joseph Curran, Shannon Wall, Charles Snow, Abraham E. Freedman and Charles Sovel) may be held for Nimmo's act in making the complaint if you find that he or they instructed Nimmo to make the complaint or joined in the prosecution thereof without probable cause.

Charge Number Seven

If you find that any one or more of the defendants directed or requested the District Attorney, without probable cause, to prosecute the complaint or if you find that any one or more of the defendants, having knowledge of any fact which a reasonable and prudent person should realize would, if disclosed, persuade the District Attorney to withdraw such complaint, then you may conclude that that defendant or those defendants acted maliciously.

Charge Number Eight

A prosecution is initiated maliciously if it is initiated in reckless disregard of the rights or the person accused, or out of personal ill will or for any purpose other than bringing the offender to justice. By reckless disregard of the rights of the person accused is meant initiation of the prosectution without any reasonable ground for belief that he is guilty. If you find that a defendant brought the prosecution in an attempt to intimidate or frighten the plaintiff from engaging in further union activities, or to undermine him and hold him up to public scorn, gave or caused a false or incomplete story or statement to the persons in authority such as the police officers, district attorney and criminal court judge or testified falsely by affidavit submitted to support the prosecution, your finding will be that such defendant acted maliciously. If you find that a defendant did not have probable cause for believing the plaintiff guilty at the time he, or in the case of NMU, it initiated the prosecution, you may, though you are not required to, infer from that fact alone that defendants or any of them acted maliciously.

Charge Number Nine

Malice may be proved by circumstantial evidence. Dean v. Kockendorfer, 237 N.Y. 384.

Charge Number Ten

If you find for the plaintiff on this second cause of action, he is entitled to recover for the actual damages directly sustained as a result of the criminal prosecution. You will award him such amount as in the exercise of your good judgment and common sense, you find fair and just compensation for the injury to his reputation and his humiliation and mental anguish resulting from the criminal prosecution, injury and inconvenience caused by his arrest, and the loss of income and expenses incurred by plaintiff in defending the criminal prosecution.

Charge Number Eleven

If you find that any one or more of the defendants acted maliciously in making this complaint then you may on the third cause of action award the plaintiff punitive damages against any such defendant which will be in addition to his compensatory damages discussed under the preceding charge.

Charge Number Twelve

There is no exact rule by which to determine the amount of punitive damages. The amount you fix as punitive damages need bear no particular ratio or relationship to the amount you award as compensatory damages. You may fix such amount as you find, in your sound judgment and discretion, based on all of the facts before you, will serve to punish the defendant and deter them or others from the commission of like offenses in the future.

Charge Number Thirteen

Punitive damages may be awarded against NMU if you find it had acted with "actual malice or reckless or wanton indifference to the rights of the plaintiff." International Brotherhood of Boilermakers, Etc. v. Braswell, (C.A.5) 388 F 2d 193, 199-200.

Charge Number Fourteen

Damages recoverable for an infringement of plaintiff's rights under the Landrum Griffin Act and for malicious prosecution emcompass whatever are the direct, natural and proximate results of the earlier prosecution. Linitsky v. Gorman, 146 NYS 313 (not officially reported) including those caused by the arrest, injury to feelings (Halterstadt v. NYL Ins Co, 194 N.Y. 1) loss of time, peril to life and liberty, injury to fame, reputation, character and health, mental suffering, general impairment of social and mercantile standing, actual loss or injury to property, interest and credit, decrease in earning capacity and all losses sustained in business Linitsky v. Gorman, supra; Restatement Torts §§ 670-671; Counsel fees and expenses incurred in defending the underlying prosecution are recoverable Worden v. Davis, 195 N.Y. 391.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

JAMES MORRISSEY,

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA, et al.,

Defendants.

----------X

DEFENDANTS' REQUESTS FOR

CHARGES TO THE JURY

CHARGE NUMBER 1

In this action the plaintiff seeks damages which he alleges were resulting from an infringement of the plaintiff's rights under Section 411, Title 29, U.S.C.A. which he states:

> "Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business

> properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

It is the duty of you, the jury, to make a determination as to whether or not the union breached its obligations under this Section by infringing on the rights of the plaintiff or whether the union was, in fact, excercising its rights and duties under this Section in order to maintain proper order and security in the union buildings. If you, the jury, find that the union was enforcing reasonable rules based upon the circumstances and conditions that the times warranted, then you must find for the defendant in this first cause of action and dismiss the plaintiff's first cause of action

CHARGE NUMBER 2

Section 411 A(5) of Title 29, U.S.C.A. st[illegible]

> "No member of any labor organization may be fined,

> suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by an officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing.
> (b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

Under this Section, in order to find for the plaintiff you must find that the plaintiff has been fined, suspended, expelled or otherwise disciplined by some union sanction. In other words, you must find that the union has in some way restricted or inhibited the plaintiff's rights as a member of said union.

CHARGE NUMBER 3

If you find for the plaintiff in his first cause of action, he is entitled to recover the actual damage sustained. You will award him such amount as in the exercise of your good judgment and common sense you find fair and just compensation. The plaintiff may only recover for damages directly and proximately resulting from violations of this

Section and if you should find that the plaintiff, in fact, did not incur any actual loss but merely suffered emotional distress then in that event the plaintiff should not be awarded any compensatory damages under this Section.

CHARGE NUMBER 4

In order to recover on his second cause of action plaintiff must prove that a defendant initiated the prosecution against him with malicious intent and that the defendant did not have probable cause to believe the plaintiff guilty of criminal trespass or disorderly conduct.

CHARGE NUMBER 5

The test of whether there is probable cause to arrest is not whether a particular defendant believes there is probable cuase but whether a reasonable prudent person believes there is probable cause. The question on the issue of probable cause is not whether the plaintiff was, in fact, guilty or innocent, or the defendant is, in fact mistaken or correct but whether or not the facts as they reasonably appeared to the defendant, a reasonable prudent person, would have believed the plaintiff guilty.

One of the crimes of which the plaintiff was accused was criminal trespass. The elements of that crime are:

> "A person is guilty of criminal trespass in the 3rd degree when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders." (Penal Law §140.10.)

Under this Section if a person is in an area which is open to the public and if he is asked to leave by the proper authorities and refused to do so, then in that event probable cause does exist.

A second crime, the crime of disorderly conduct contains the following elements:

> "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm or recklessly creating a risk thereof (6) He congregates with other persons in a public place and refuses to comply with the lawful order of the police to disperse." (Penal Law §240.20(6).)

Under this Section it is not essential that there be an actual breach of the peace and the test is whether the plaintiff's conduct under the circumstances led or was likely to lead to disorder or a public disturbance.

CHARGE NUMBER 6

If you find that the plaintiff did not present his grievance concerning the ban of distribution of literature to the proper union body when he should have reasonably done so and that the plaintiff by failing to air his grievance did fail to exhaust his intraunion remedy, then in that event you should find for the defendant in the first cause of action and dismiss the plaintiff's first cause of action and deny his request for exemplary damages in his third cause of action under Section 411, Title 29, U.S.C.A., Buzzard v. Local Lodge 1040 International Association of Machinists and Aerospace Works, 480F2d 35

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

JAMES M. MORRISSEY,

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN, and CHARLES SOVEL,

Defendants.

----------X

MOTION

72 Civ. 2363 (RJW)

S I R S:

Defendants, NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, and CHARLES SNOW, move the court to set aside the verdict entered in the above entitled action on April 17, 1975, and to enter judgment in favor of the defendants in accordance with the motion for directed verdict made by the defendants at the close of all the testimony herein, on the grounds, as stated in that motion that the verdict was against the weight of the evidence, not supported by the evidence elicited at the trial and against the law.

In the alternative, defendants move the court to set aside the verdict and grant the defendants a new trial on the following grounds:

1. The verdict is contrary to law.

2. The verdict is contrary to the weight of the evidence.

3. The verdict of the jury as to compensatory and to punitive damages on all counts, against all the defendants, was grossly excessive and unreasonable under the evidence presented at the trial, and further shocks the conscience of the court.

4. The verdict in the first cause of action in the sum of $500.00 compensatory damages and $220,000.00 in punitive damages, and in the second cause of action in the sum of $3,000.00 in compensatory damages and $110,000.00 in punitive damages is contrary to the Court's ruling as to duplication of said awards.

5. This honorable Court erred during the course of the trial in the following respects:

(a) in refusing to adjourn the trial of this action as requested by the attorney for Joseph Curran because of Mr. Curran's medical unavailability to be present during the time of this trial because, as stated by F. V. Mina, attorney for Joseph Curran, Mr. Curran was to be admitted to the hospital on April 14, 1975 for purposes of an operation of the colin and said date was the first day of the trial;

(b) for refusing to permit the attorney for the defendants, F. V. Mina, to offer proof as to the reasons for the absence of Mr. Joseph Curran and Mr. Charles Snow at the trial of this action;

(c) in refusing to admit Defendants' Exhibit B for Identification, a letter of Ralph Ibraham which was essential to the defendants' showing lack of malice on their part.

6. This honorable Court erred in its charge to the jury in the following respects:

(a) by charging the jury: "As a matter of law that on July 1, 1971 the notice against distributing unauthorized literature in the Union Hall, which had been posted earlier, was not at that time, that is on July 1, 1971, duly promulgated by the union." This is properly a question of fact which should have been submitted to the jury;

(b) by instructing the jury: "If you find that on July 1, 1971, plaintiff's activities created an immediate danger of seriously interfering with the union's function, you may find that prohibiting these activities was reasonable;"

(c) by instructing the jury: "If you find that any defendant's action in causing Mr. Morrissey to be removed from the Union Hall was 'discipline' and restricted or inhibited his right as a member of the union, you may also find for plaintiff on his first cause of action;"

(d) by instructing the jury: "The defendant, National Maritime Union, may be held for Mr. Nimmo's act in making this complaint if you find that Mr. Nimmo was an employee of the National Maritime Union and made the complaint in the course of or within the scope of his

(e) in instructing the jury: "You may also find against the union if you find against Joseph Curran, Shannon J. Wall or Charles Snow and if you further find that their actions were taken in their capacity as officers or employees of the union;"

(f) by instructing the jury: "On the element of punitive damages in the plaintiff's second cause of action, you may, if in the exercise of your discretion you find that the degree of the particular defendant's malice or recklessness warrants your doing so, award the plaintiff punitive damages." This charge was improper in that it failed to properly and adequately define the nature of conduct necessary to support an award for punitive damages;

(g) in charging the jury: "You may also find against the union if you find against Joseph Curran, Shannon J. Wall or Charles Snow and if you find that their actions were taken in their capacities as officers or employees of the union." This charge was given in relation to the plaintiff's second cause of action, that being malicious prosecution, and was improper for the reason that the union, an unincorporated business association, may not be held unless the acts of these individuals were ratified by the union membership.

7. That the Court erred in response to the jury's question as to whether the union could be held accountable, by reading two sentences from the original charge which, in the opinion of counsel for the defendants, misled the jury and was grossly prejudicial. The two sentences in question from the

charge relating to the second cause of action were:

1. In order to recover against the union on his second cause of action, plaintiff must prove that at the time he he made the complaint, Mr. Nimmo acted as an employee of the union, did not have probable cause to believe that plaintiff was guilty of criminal trespass or disorderly conduct, and that he acted with malice; and

2. "You may find against the union if you find against Joseph Curran, Shannon J. Wall or Charles Snow and if you further find that their actions were taken in their capacities of officers or employees of the union."

8. The verdict is contrary to law and the weight of the material and competent evidence. Some of the reasons being set forward as follows:

(a) The verdict of the jury awards compensatory damages under the plaintiff's first and second causes of action and punitive damages under the plaintiff's first and second causes of action. Both causes of action arise out of the same circumstances, that of the plaintiff's distribution of literature in the Union Hall and subsequent arrest and prosecution. Therefore, there can be only one verdict for one wrong;

(b) The weight of the evidence established at the trial did not warrant the submission of punitive damages to the jury. There was no showing of competent evidence on the part of the plaintiff that in any way indicates maliciousness, recklessness, or wantonness on any of the defendants' parts on any of the plaintiff's

alleged causes of action;

(c) The recovery of punitive damages is an extremely harsh remedy and before a charge of punitive damages is given to the jury, there should be a showing that the conduct on the part of the defendants was tantamount to criminality;

(d) The weight of the evidence as displayed at the trial does in no way conect the defendants, Shannon J. Wall and Joseph Curran, with the acts that led to the arrest and subsequent prosecution of the plaintiff, Morrissey;

(e) The weight of the evidence establishes a lack of legal malice;

(f) The weight of the evidence establishes that the defendants had probable cause to prosecute the plaintiff, Morrissey;

(g) The weight of the evidence does not support the verdict as to punitive damages against the defendant, Charles Snow, as he acted on advise of counsel in the arrest and subsequent prosecution of the the plaintiff;

(h) It is contrary to law to hold an unincorporated association such as the National Maritime Union for acts of its officers unless such acts are ratified by the union membership;

(i) It is contrary to law to allow a verdict of punitive damages to be sustained when they are far in excess of the actual criminal sanctions under statutes governing such conduct. It should be noted at this time that Landrum-Griffin Act carries a maximum fine of $1,000.00;

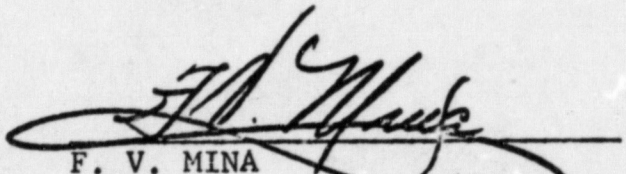
(j) It is contrary to law to allow a recovery under Section 411 A(5), Title 29, U.S.C. for an act that is not intraunion dicipline;

(k) The verdict is contrary to law and the weight of the material evidence to find for the plaintiff under Section 411 A(2) or 411 B in that said rules were adopted as reasonable rules to insure the safety and well being of the union and its members;

(l) It is contrary to the law and the weight of the material and competent evidence for the plaintiff to recover under the Landrum-Griffin Act in this action because Landrum-Griffin has no applicability to the wrongs alleged by the plaintiff.

Defendants reserve the right to supplement or amplify the foregoing reasons for a new trial following receipt of a transcript of the record.

Dated: New York, New York
April 25, 1975



F. V. MINA
Attorney for Defendants-
National Maritime Union,
Curran, Wall and Snow
217 Broadway
New York, New York 10007
(212) 233-4397

694A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, Plaintiff, -against- NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN AND CHARLES SOVEL, Defendants.	**REPLY AFFIDAVIT** 72 Civ. 2363(RJW)

F.V. MINA, being duly sworn, deposes and says:

1. That I am an attorney admitted to practice in this Court.

2. That I am trial counsel to Nicholas A. D'Onofrio, attorney for the defendants, NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, and CHARLES SNOW, in the above entitled action, and as such am familiar with all the facts herein involved.

3. That in the late afternoon on the 9th day of April, 1975, I was informed that the defendant, JOSEPH CURRAN, was to be admitted into the hospital on April 14, 1975 for the purpose of an operation to remove a tumor on his colon.

4. That I was further informed that this operation was extremely serious in nature and could not be postponed

without seriously endangering Mr. Curran's health.

5. That upon receiving this information as to Mr. Curran's state of health, your deponent inquired as to whether or not this operation could be postponed. The answer being in the negative, on April 10, 1975, deponent called the Chambers of the Honorable Robert J. Ward to inform him of the situation and to request an adjournment for a period of approximately three (3) months to allow a certain period of time for Mr. Curran's convalescence.

6. That the Honorable Robert J. Ward was not in his Chambers at that time and another call was made later that day in an attempt to contact his Honor. Judge Ward was contacted and deponent requested a conference for the following day to apprise the plaintiff of the situation and in order to make the motion of a continuance.

7. That Judge Ward informed your deponent at that time that his schedule for the following day was completely filled and therefore a conference was out of the question.

8. That Judge Ward further informed your deponent that deponent's motion for a continuance would be denied and therefore shoule not bother apprising the plaintiff of Mr. Curran's condition.

9. That deponent again requested that Judge Ward reconsider his denial for it was felt that Mr. Curran was an essential party and would also be an essential witness. It was stated that Mr. Curran would be seriously prejudiced as would the other defendants.

10. That deponent stated that a medical affidavit would be produced immediately to substantiate this motion, however, his Honor stated that that would be unnecessary for the motion was denied.

11. That the Honorable Robert J. Ward told your deponent that the trial would commence on the 14th day of April, 1975 and he could make the appropriate motions at that time.

12. That on the 14th day of April, 1975 deponent did make an application for an adjournment due to the illness of Mr. Curran and said application was denied.

13. That an affidavit was obtained by Mr. Curran's physicians stating the seriousness of his illness. (See affidavit attached.)

WHEREFORE, it is respectfully requested that the verdict be set aside and a new trial granted.

F. V. MINA

Sworn to before me this
15th day of May, 1975

697A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY,

Plaintiff,

vs.

NATIONAL MARITIME UNION of AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN, and CHARLES SOVEL,

Defendants.

CASE NO. 72-Civ.-2363-RJW

AFFIDAVIT

STATE OF FLORIDA)
ss:
COUNTY OF PALM BEACH)

PHILLIP DeWOLFE, being duly sworn, deposes and says:

1. I am a physician duly licensed to practice medicine in the State of Florida, specializing in the field of General Surgery.

My office is located at 855 South Federal Highway in the Wier Plaza, Boca Raton, Florida.

2. JOSEPH CURRAN, of Boca Raton, Florida, is currently under my care for treatment of colon cancer.

3. As a result of diagnostic procedures performed on Mr. Curran last week, it was determined by deponent that Mr. Curran should be admitted to the hospital this week for surgery. This surgery was not elective surgery on the part of Mr. Curran but, in my judgment, was necessary to be performed this week.

4. Accordingly, Mr. Curran was admitted to Boca Raton Community Hospital on April 14, 1975 and it is anticipated that surgery will be performed on April 16, 1975. Under these circumstances, it is not medically possible for Mr. Curran to travel to New York this week or in the near future to give testimony.

PHILLIP DeWOLFE, M.D.

SWORN to and SUBSCRIBED BEFORE ME
this 15th day of April, 1975.

ANA RACHEL SZTOLERMAN
NOTARY PUBLIC, State of Florida

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JAN. 1, 1979

My Commission Expires:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, Plaintiff, -against- NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, and CHARLES SNOW, Defendants.	72 Civ. 2363 (RJW) AFFIDAVIT

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ARTHUR E. McINERNEY, being duly sworn, deposes and says:

The defendants have submitted "Reply Affidavits" relating to Mr. Curran's alleged indisposition which sent him to the hospital on April 14th.

It is significant that the affidavit of Dr. Phillip DeWolfe does not state with any degree of scientific precision, what ailed Mr. Curran.

However, Mr. Curran himself has published this information as he told The Pilot:

"It was just a scraping"

See excerpt from page 7 of the May issue of The Pilot (A copy of which is annexed hereof and marked Exhibit A).

/S/ Arthur E. McInerney
Arthur E. McInerney

Sworn to before me this

EXHIBIT A

700A

Curran recovering after surgery

Former President Joseph Curran is recovering at his Florida home after surgery.

The founder of NMU retired two years ago after an operation performed in late 1972. He has had regular checkups since then. A checkup last month indicated the need for another operation.

Curran told The PILOT, "It was just a scraping," and said he's recovering nicely. He and Mrs. Curran sent greetings to the membership and their thanks for the many "get well" messages Joe has received.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, Plaintiff, -against- NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW, Defendants.	AFFIDAVIT 72 Civ. 2363 (RJW)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

F. V. MINA, being duly sworn, deposes and says:

Deponent is in receipt of the Affidavit of ARTHUR E. McINERNEY dated May 16, 1975.

In his Affidavit, Mr. McInerney maliciously and incorrectly attempts to impugn the veracity of Mr. Curran's physician, Dr. Phillip DeWolfe. There is absolutely no basis for the action taken by Mr. McInerney in his Affidavit.

Mr. McInerney quotes an article written in "The Pilot" which quotes Mr. Curran as stating, in reference to his operation: "It was just a scraping".

What exactly does Mr. McInerney expect Mr. Curran to say to the Union membership; that he has cancer?

Deponent strongly thinks, at this time, that Mr. McInerney should attempt to conduct himself in the manner becoming an attorney, which would require the submission of proper affidavits if there is to be any contesting the alleged injury of Mr. Curran.

F. V. MINA

Sworn to before me, this
20th day of May, 1975.

703A

42767

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JAMES M. MORRISSEY,

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN, and CHARLES SOVEL,

Defendants.

OPINION

72 Civ. 2363

U.S. DISTRICT COURT
S.D. OF N.Y.
JUL 10 11 28 AM '75

----------x

A P P E A R A N C E S

DUER & TAYLOR, ESQS.
Attorneys for Plaintiff

ARTHUR E. MCINERNEY, ESQ.
JOHN S. CHAPMAN, JR., ESQ.
Of Counsel

F.V. MINA, ESQ.
Attorney for National Maritime Union, Curran, Wall and Snow

HART & HUME, ESQS.
Attorneys for Sovel and Freedman

JOSEPH BERGADANO, ESQ.
Of Counsel

MICROFILM
JUL 10 1975

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WARD, J.

James M. Morrissey ("Morrissey"), a member of the National Maritime Union of America ("the Union"), brought this action in June, 1972, alleging violations of his rights under 29 U.S.C. §411(a)(2) and (5) (hereinafter referred to as the Landrum-Griffin Act), and malicious prosecution, on the part of certain Union officers and employees and the Union itself. After a four day trial in April, 1975, the jury returned a verdict for plaintiff, awarding a total of $333,500 in compensatory and punitive damages against defendants Joseph Curran ("Curran"), Shannon J. Wall ("Wall"), Charles Snow ("Snow"), and the Union itself.[1]

Defendants move pursuant to Rules 50 and 59, Fed. R. Civ. P., for an order setting aside the verdict against them, and for judgment in their favor dismissing the complaint, or in the alternative, for a new trial. For the reasons set forth below, the motions are denied, except that the motion to set aside the verdict against the defendant Union and enter judgment in its favor is granted.

The undisputed events which form the basis of Morrissey's allegations, briefly, are these. On July 1, 1971, Morrissey who had for years opposed the established Union

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1 During the trial plaintiff agreed to the dismissal of all claims against James Nimmo, Abraham E. Freedman, and Charles Sovel.

leadership, was in the Union Hall in New York City, distributing pamphlets contesting Curran's policies as he had on several occasions during the preceding month. Curran was President of the Union, but on that day was in Boca Raton, Florida. The Master-at-Arms, James Nimmo, upon instructions from Snow, the Chief of Security, several times requested Morrissey to cease distributing pamphlets inside the Hall, pointing out to him a notice posted on the bulletin board in the Hall and advising him that his conduct was illegal. The notice, which was undated but was signed by Wall, then the Union's Secretary-Treasurer, read:

> It is the established policy of the National Maritime Union that only official union publications may be distributed inside the Hiring Halls or other union offices. No solicitation is permitted inside any union buildings. Any persons attempting to solicit sales or distribute unauthorized literature inside NMU buildings will be asked to discontinue such practice and, in the event they fail to comply with such request, will be required to leave the premises.

When Morrissey persisted in distributing his pamphlets and refused to leave the building, the police were called, as Snow had directed. After a brief meeting with Snow in his office, the police took Morrissey to the Sixth Precinct Station House, where, upon a complaint which Nimmo signed, he was charged with disorderly conduct and criminal trespass. Morrissey was al-

lowed to leave within a short time but was summoned for arraignment July 13, 1971. At the arraignment the charge of disorderly conduct was dropped and the case set for trial on July 20, 1971. The trial judge, after a preliminary hearing at which no testimony was taken, summarily dismissed the charge of criminal trespass, finding no chargeable offense upon any set of facts which the State offered to prove. Counsel for the Union was present at that time.

Morrissey, in this civil action brought pursuant to 29 U.S.C. §412, claimed that the actions of the Union officials in prohibiting and preventing him from distributing the pamphlets in the Union Hall deprived him of his right under 29 U.S.C. §411(a)(2) to meet and assemble freely with other Union members and to express his views, arguments and opinions; that their causing his arrest constituted improper disciplinary action in violation of 29 U.S.C. §411(a)(5); and that the arrest and subsequent attempts to prosecute him constituted the common law tort of malicious prosecution. He sued for both compensatory and punitive damages.

The Court, using a special verdict form, submitted the questions of liability and compensatory and punitive damages on the Landrum-Griffin Act claims and the malicious prosecution claim separately to the jury. The jury returned a verdict for plaintiff distributed as follows:

Landrum-Griffin Act: Compensatory damages:		$500
Punitive Damages	against the Union:	$50,000
	against Curran:	$100,000
	against Wall:	$60,000
	against Snow:	$10,000
Malicious Prosecution: Compensatory damages:		$3,000
Punitive Damages	against the Union:	$50,000
	against Curran:	$25,000
	against Wall:	$15,000
	against Snow:	$20,000

Defendants base their motions on the grounds that the verdict is contrary to the weight of the evidence, contrary to the law, so excessive as to shock the conscience, and duplicative, as well as on the ground that the Court made prejudicial errors in its rulings during the trial and in its charge.

It is clear that the motion for judgment notwithstanding the verdict on the ground that it is against the weight of the evidence must be denied. The standard on such a motion is the same as the standard for a directed verdict, that is, whether there was evidence from which the jury could have properly found for plaintiff, against whom the motion is made, viewing the evidence most favorable to him and giving him the benefit of all reasonable inferences. 9 Wright and Miller, Federal Practice and Procedure §2524 (1971); Simblest v. Maynard, 427 F.2d 1, 4 (2d Cir. 1970). The Court is of the view that the evidence presented, viewed in this light, was certainly sufficient to permit the case to go to the jury.

The central events of July 1, 1971, testified to largely by plaintiff and Nimmo, and set forth above, were basically undisputed. To defeat plaintiff's Landrum-Griffin Act claims, defendants attempted to show that the notice signed by Wall and posted in the Union Hall, to the effect that Union policy prohibited passing out unauthorized literature, was a valid regulation of conduct which might interfere with the Union's performance of its obligations, or a reasonable rule as to the responsibility of members toward the Union as an institution. 29 U.S.C. §411(a)(2). In the Court's view, the evidence presented utterly failed to establish this defense. Snow testified by deposition that the members tended to get into arguments which sometimes became fights, and that Morrissey would never back away from a fight, although he did not start fights. Wall testified on the stand that he had signed the notice and caused it to be posted at Snow's request, because passing out literature in the Hall tended to stimulate arguments.

Whether this would be a reasonable basis for adopting a standing rule might have been a question for the jury. However, the Union Constitution, in evidence, clearly states that all policies of the Union and all changes in official Union policy, must be formally approved by the members of the Union. And the transcript of the proceeding before Judge Ringel in New York Criminal Court on July 20, 1971, also in evidence

in this action, at which the charge of criminal trespass was dismissed, contains statements made by attorneys for the Union, that the notice in question was never so ratified. The notice itself purports to reflect a rational policy. There is no evidence whatever in the record that the "policy" referred to in the notice was ever adopted by the Union membership. Accordingly, the Court instructed the jury, on this issue alone, that the notice itself was not duly promulgated by the Union. Wright and Miller, supra, §2425.

Proof of a threat of imminent disturbance as a result of Morrissey's conduct on July 1, 1971 might also have defeated his Landrum-Griffin Act claim. However, there was little evidence (other than Curran's hearsay testimony relating his later conversations with Snow) that Morrissey's distributing literature on that date caused or threatened to cause any imminent disruption in the Union Hall. In fact, the preponderance of evidence was to the contrary, creating certainly sufficient question to warrant submission of this issue to the jury.

Curran, to defeat Morrissey's Landrum-Griffin Act claim against him, argues that there is no evidence in the record to connect him to the events of July 1, 1971, since he was in Boca Raton, Florida and none of the other participants in Morrissey's arrest and prosecution testified to con-

sulting him concerning it. He himself testified by deposition that he did not know of the fact of the arrest until after it had occurred, when he discussed the events with Snow, the Port Agent, and the Union's counsel. However, records of telephone calls from the Union headquarters to Boca Raton on June 30,1971 and July 20, 1971, as well as on other dates during those months, were introduced, although there is no direct evidence concerning the identity of the parties to those conversations or their content. Morrissey had distributed pamphlets in the same manner on several occasions during the preceding month, and had been instructed to cease by the Union attorneys.

Curran also testified by deposition that he, as President of the Union, was generally familiar with Union affairs, and while he stated that he did not himself know whether the notice was posted in the Union Hall on July 1, 1971, he did not disclaim knowledge of its existence, or indicate disapproval of the "policy" in any way. Moreover, he stated that he made no effort to have the charges against Morrissey dropped, in the context of statements from which the jury could infer general approval of Snow's action. The inference that Curran was consulted concerning this method of enforcing the "policy" reflected in the notice, and its enforcement in this instance, is not impermissible, and the evidence, though circumstantial, was sufficient to submit to the jury the Landrum-Griffin Act claim against him.

Similarly, the Court finds that there was sufficient evidence in the record not only to submit the issues to the jury but also to warrant its conclusion that each of the defendants had participated in the alleged malicious prosecution. The jury was informed of the nature of the offenses of disorderly conduct and criminal trespass, and was instructed without objection (see Rule 51, Fed. R. Civ. P.) substantially in accordance with defendants' requests that if a reasonably prudent person in the position of any of the defendants would have been justified in considering Morrissey's actions within those offenses then that defendant had probable cause to initiate or further his arrest and prosecution and the jury could not find against that defendant. 2 N.Y. Pattern Jury Instructions 803 (Judicial Conference of the State of New York, 1968) ("PJI"). The jury was also instructed that to find against any defendant on this claim it must also find that he acted with malice, and was instructed without objection concerning what constitutes malice. The jury is permitted to infer malice from the fact of prosecution without probable cause, Bradner v. Faulkner, 93 N.Y. 515 (1883); 2 PJI 808, and from all the circumstances of the case, and was clearly instructed that reliance on advice of counsel could be taken as evidence of lack of malice. 2 PJI 804. There was also some additional testimony, sufficient to contribute to an inference of animosity, concerning Morrissey's opposition to a pension

plan in which these defendants participated. Since this type of judgment is peculiarly within the jury's province, in the Court's view the issue was properly submitted to the jury, and the jury's evident conclusion is not unsupported by the record.

Counsel argues on behalf of both Curran and Wall that they were insufficiently connected with the arrest and subsequent prosecution to be held for malicious prosecution. As the Court ruled at the conclusion of defendants' case, the evidence that both were high ranking officials of the Union and knew of the arrest shortly after it occurred, the telephone calls to Boca Raton, and the subsequent involvement of counsel for the Union in the prosecution of the charges against Morrissey, were sufficient to create issues of fact concerning their initiation or furtherance of the arrest and prosecution which were properly submitted to the jury.

Defendants argue as a matter of law that the verdict must be set aside because it is essentially double recovery on a single cause of action. They argue that the case arises from a single injury and a single set of operative facts. The Court considered this question before it submitted the case to the jury, and remains of the view that there are two separate and distinct causes of action here.

In order to prove a violation of 29 U.S.C. §411 (a)(2) it would have been sufficient for plaintiff to show that his right to express his views, arguments and opinions was infringed upon by the Union officials without a validly adopted rule governing conduct which might interfere with its performance of its legal or contractual obligations. Salzhandler v. Caputo, 316 F.2d 445 (2d Cir. 1963), cert. denied, 375 U.S. 946 (1963). Merely his forcible ejection from the Union Hall, which effectively prevented him from expression of his views within the Hall, would have sufficed, without any evidence concerning malice or his being arrested on criminal charges and brought to trial. This is a statutory right, reflecting a legislative determination that Union members should be assured of a right to speak which goes beyond even that which is Constitutionally protected. Salzhandler v. Caputo, supra.

In order to prove the tort of malicious prosecution, on the other hand, plaintiff was required to establish, in addition to the facts of his arrest and the dismissal of the charges against him, that a reasonably prudent person in defendants' position was not justified in believing his actions to be conduct constituting criminal trespass or disorderly conduct (this whether or not the posted notice

was validly adopted), and that defendants acted with malice in initiating or furthering his prosecution. See, e.g., Munoz v. City of New York, 18 N.Y.2d 6, 271, N.Y.S.2d 645, 218 N.E. 2d 527 (1966). This requires substantially different evidence from the alleged Landrum-Griffin Act violation.

In fact, the Court specifically charged the jury on the distinct standard of recovery for compensatory damages in the two claims in several respects. Further, the jury was instructed not to duplicate awards. Significantly, in its award of punitive damages, after inquiring whether it was permitted to allocate recovery among the several defendants, the jury distributed the amounts in quite different proportions among them, reflecting its judgment of their relative culpability on each claim.

Thus, while the case arises from occurrences which are so intertwined that the exercise of the Court's pendent jurisdiction is completely appropriate, there are two separate causes of action here, and the jury clearly awarded two distinct recoveries.

Defendants further argue that the verdict must be set aside as a matter of law because the Union cannot be held for punitive damages when the members have not ratified the acts of their officers and employees. Only now, after trial, they present cases supporting this contention. Martin v. Curran, 303 N.Y. 276, 78 N.Y.S.2d 506, 101 N.E.2d 683 (1951); Gulickson v. Forest, 290 F. Supp. 457, 469 (E.D.N.Y. 1968).

Upon consideration the Court agrees. With respect to the Landrum-Griffin Act claim, the Court charged that the notice was never duly promulgated by the Union; with respect to the claim of malicious prosecution, there was no evidence that the membership ever ratified the acts of the Union officers and employees. The officers' and employees' actions, although taken ostensibly in their official capacity, were beyond the scope of their authority as officers and employees of the Union.

Accordingly, defendants' motion to set aside the verdict and enter judgment in their favor is granted insofar as it relates to the award of punitive damages against the Union.

Defendants ask the Court to set aside the jury's award of punitive damages and order a new trial, because the award is so excessive that it shocks the conscience. They compare the award of $220,000 for the violations of the Landrum-Griffin Act with the maximum fine of $1000 pursuant to 29 U.S.C. §530 after criminal conviction of such violations, and claim that there is insufficient evidence of malice to support an award of $110,000 in punitive damages for malicious prosecution.

The size of an award of punitive damages is for the jury to determine, and the jury was properly instructed that it need bear no particular relationship to the actual damages incurred, but is rather designed to have enough impact to

punish and deter. Reynolds v. Pegler, 123 F. Supp. 36, 38 (S.D.N.Y. 1954) (Weinfeld, J.), aff'd, 223 F.2d 429 (2d Cir.), cert. denied, 350 U.S. 846 (1955); 2 PJI 810. Whether the size of the award is so excessive as to be shocking to the conscience will depend upon the particular facts of the case, including the whole setting of the trial, the character of the evidence, and the nature of the issues. The Court must exercise its broad discretion in reviewing the size of the award to prevent a miscarriage of justice. 6 A. Moore's Federal Practice ¶59.05[3] (1972). In Roginsky v. Richardson Merrill, Inc., 378 F.2d 832 (2d Cir. 1967), upon which defendants heavily rely, the Court set aside an award of $100,000 punitive damages, which it compared to the potential criminal fine of $10,000, largely because the defendant was exposed to a multiplicity of actions with potentially astronomical awards. The Court there determined that the record was lacking in evidence of the degree of culpability, that is reckless or wanton behavior in disregard of plaintiff's rights, which would justify such consequences. Id., at 843 et seq.

In the instant action, by contrast, there is a single plaintiff, with no multiple pending actions, and a record which, in the Court's view, sufficiently established the malice or

reckless disregard of plaintiff's rights to support a jury's decision to award punitive damages. Having so determined, the jury was within its province to choose an amount which it considered likely to have the effect of punishing defendants and deterring them or others from such conduct. In the Court's view, the size of the award reflects the value which the jury placed upon Union members' right to express their views, and to be free from malicious prosecution, and reflects as well its judgment concerning what award would sufficiently deter defendants or others in the future. Since a criminal conviction, with a possible prison sentence, carries collateral effects which do not necessarily relate directly to the size of the possible fine, the Court does not consider the jury limited, in a civil action, to an award of punitive damages of comparable size. Moreover, the Court notes that proof of malice or reckless disregard of plaintiff's rights would not have been required to support a criminal conviction for violation of 29 U.S.C. §411(a)(5).

Accordingly, the Court declines to order a remittitur or a new trial on the ground that the size of the award is shocking to the conscience.

Defendants strenuously argue that it was an abuse of this Court's discretion to deny a continuance when counsel informed the Court five days before trial that Curran was to be hospitalized for immediate surgery and would be unavailable to testify at trial.,

The Court has wide discretion to rule on an application for a continuance, to be exercised upon consideration of all the circumstances of the case. Davis v. United Fruit Company, 402 F.2d 328 (2d Cir. 1968), cert. denied, 393 U.S. 1085 (1969). This discretion has been consistently upheld in this Circuit, especially since the institution of the individual assignment system. Lamb v. Globe Seaways, Inc., Dkt. No. 73-2692 (2d Cir. May 28, 1975).

Ordinarily the Court will look with favor upon an application for a continuance based upon the unexpected illness of a party. However, this was not the ordinary case. This action was commenced in June of 1972 and was assigned to me together with some twenty-one other matters pending over three years, as a priority case under the District Court's Plan for the Reallocation and Disposition of Three-Year-Old Civil Cases (the "crash program"). This program, adopted by the Board of Judges of the Court on March 3, 1975 pursuant to resolutions of the Judicial Conference directing District Judges to eliminate old cases from the dockets, required all these cases, many of considerable complexity and requiring lengthy trials, to be tried or otherwise disposed of before July 11, 1975. Counsel noted their readiness for immediate trial at a pretrial conference held April 4, 1975 and were given a firm date. At the same conference all the reassigned "crash program" cases were scheduled for expedited completion of discovery where necessary, and given trial dates through

July 11, 1975. This Circuit, faced with particular problems of calendar congestion, has been especially sympathetic to the District Court's efforts in this respect. See, e.g., cases cited in Lamb v. Globe Seaways, Inc., supra.

Moreover, in ruling on this application, the Court considered all the aspects of the case. Defendant's predicament was in large part of his own creation. Plaintiff had taken Curran's deposition, and the latter's attorney had had the opportunity at that time to preserve testimony favorable to him, had he so chosen. Curran is not a young man, and in requesting an indefinite continuance counsel gave no assurance that, even had it been possible for the Court to accomodate him by rescheduling the trial for a later date, he would have been able to attend. See Scholl v. Felmont Oil Corp., 327 F.2d 697 (6th Cir. 1964). Plaintiff, too, deserves his day in court. Furthermore, at no time did counsel make an offer of proof concerning what material testimony, prejudicial by its absence, Curran might give in person.

Even now, after trial, upon review of the evidence as a whole, the Court remains of the view that Curran was not deprived of substantial justice by the denial of a continuance under the circumstances. Indeed, inasmuch as plaintiff had the

burden of proof, the Court cannot assume that Curran's absence was more prejudicial to him than to plaintiff. Accordingly, the Court declines to order a new trial on this ground.

As a further basis for setting aside the award of punitive damages, defendants claim that the jury was not properly instructed on the degree of malice required to support such an award. The Court notes that defendants submitted no requests to charge on this issue, and after the Court's charge made no specific objections to its instructions in this respect, nor any requests to modify or supplement the charge. Furthermore, defendants did not object when the Court outlined the special verdict form including two questions concerning punitive damages, which it intended to submit to the jury. Nevertheless, if clear injustice would result from an error in the Court's charge, the verdict remains subject to review on this ground. 6 A. Moore's Federal Practice ¶59.08[2] (1972). There was, however, no such error in the charge. Punitive damages may be awarded for violations of the Landrum-Griffin Act upon a showing of malice or reckless indifference to plaintiff's rights. International Brotherhood of Boilermakers, etc. v. Braswell, 388 F.2d 193 (5th Cir. 1968) (Wisdom, J.) And they may likewise be awarded for malicious prosecution if defendants acted in reckless disregard

of plaintiff's rights. 2 PJI 810. The jury was properly instructed that a finding of malice sufficient to find liability for malicious prosecution would not necessarily justify an award of punitive damages, but that such an award should reflect the jury's judgment of a particular defendant's malice or recklessness. See Reynolds v. Pegler, 123 F. Supp. 36, 41 (S.D.N.Y. 1954), aff'd, 223 F.2d 429, cert. denied, 350 U.S. 846 (1955). Taken as a whole, the Court's instructions fairly presented to the jury the standard by which they should assess punitive damages. And the allocation which the jury made reflects a reasoned application of this standard. Id.

Defendants further claim, in connection with their motion for a new trial, that the issue of liability under 29 U.S.C. §411(a)(5) was improperly submitted to the jury, because, to constitute "discipline" within the meaning of that section their actions would have had to be such as to deprive plaintiff of his Union rights, for example, membership. Causing him to be summarily arrested, taken from the Union Hall to the precinct, and booked on charges of criminal trespass and disorderly conduct, they contend, is not the "discipline" to which the Landrum-Griffin Act is addressed. However, the Landrum-Griffin Act protects the Union members right to discuss Union affairs, and whether a particular action constitutes discipline is to be determined by its practical effect, Rekant v. Shochtay-Gasos Union, Local 446,

etc., 205 F. Supp. 284, 289 (E.D. Pa. 1962). In the Court's view, the jury was entitled to find that the practical effect of the defendants' actions was disciplinary in nature.

In any event, since the jury's finding of a violation of plaintiff's rights under the Landrum-Griffin Act was supported by the evidence addressed to §411(a)(2), any possible error in submitting the claim under §411(a)(5) to the jury cannot be considered prejudicial.

Defendants also move for a new trial on the ground that the verdict was against the weight of the evidence in numerous respects. The standard by which evidence is judged on a motion for a new trial is less stringent than upon a motion for judgment notwithstanding the verdict. However, determination of that motion rests within the sound discretion of the trial court to see that there is no miscarriage of justice. 6 A. Moore's Federal Practice ¶59.08[5] (1972). As discussed above, there was sufficient evidence to warrant submission of the case to the jury, with an appropriate direction in view of the uncontroverted evidence that the "policy" to which the notice referred had never been officially adopted by the Union. Upon review of the probative evidence in the case, together with the inferences which the jury could reasonably have drawn therefrom, and evaluating all the testimony, the Court is persuaded that the jury's verdict was neither unsupported by the evidence, nor against "the right

and justice of the case." Wright and Miller, supra, §2531. This Court, too, considers the abuse of their authority by persons in positions of responsibility to be a serious matter, and places high value upon individuals' rights to dissent, to express their views, and to be free of groundless arrest. In light of the circumstances of this case, the Court does not find the verdict a miscarriage of justice.

The Court has considered the other arguments which defendants advance and finds them without merit. Accordingly, the motion for a new trial is denied; the motion to set aside the verdict is granted insofar as it relates to the award of punitive damages against the Union, and is in all other respects denied.

Plaintiff's motion to recover attorney's fees is, in the Court's discretion, denied.

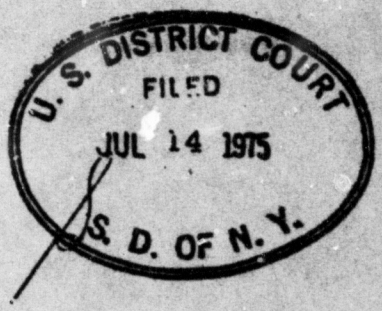
It is so ordered.

Dated: July 10, 1975

Robert J. Ward
U. S. D. J.

724A

Ward, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JAMES M. MORRISSEY

Plaintiff

-against- : 72 Civil 2363 (RJW)

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN and CHARLES SOVEL : JUDGMENT #75,604

Defendants

- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Robert J. Ward, United States District Judge, and a jury, on April 14,15,16 and 17, 1975, and the Court having submitted the attached special questions to the jury, and the jury having answered the said special questions, and the jury having returned a verdict in favor of the plaintiff, and defendants having moved the Court to set aside the verdict, and the Court having reserved decision on the said motion, and the Court thereafter on July 10, 1975, having handed down its opinion denying motion for a new trial, and the motion to set aside the verdict is granted in sofar as it relates to the award of punitive damages against the Union, and is in all other respects denied, plaintiff's motion to recover attorney's fees, is denied, it is,

MICROFILM
JUL 15 1975

ORDERED, ADJUDGED and DECREED: That plaintiff JAMES M. MORRISSEY have judgment against defendants NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW, in the amount of $500., and plaintiff have judgment against defendant JOSEPH CURRAN in the amount of $100,000., against defendant SHANNON J. WALL in the amount of $60,000., against defendant CHARLES SNOW in the amount of $10,000., for a total of $170,000., on the first cause of action, and it is further,

ORDERED, ADJUDGED and DECREED: That plaintiff JAMES M. MORRISSEY have judgment against defendants NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW, in the amount of $3,000., on the second cause of action and it is further,

ORDERED, ADJUDGED and DECREED: That plaintiff JAMES M. MORRISSEY have judgment against defendant JOSEPH CURRAN, in the amount of $25,000., against defendant SHANNON J. WALL, in the amount of $15,000., and against defendant CHARLES SNOW, in the amount of $20,000., for the total amount of $60,000., on the third cause of action, and it is further,

ORDERED: That the complaint be and it is hereby dismissed as against defendants JAMES NIMMO, ABRAHAM E. FREEDMAN and CHARLES SOVEL.

Dated: New York, N.Y.
July 14, 1975

Raymond F. Burghardt
Clerk

APPROVED:

Robert J. Ward
U.S.D.J.

7/18/75 - No appearance in opposition. Bill of Costs as taxed in the sum of $3,254.44, in favor of plaintiff, as against defendants N.M.U., Curran and Snow, & Wall and added to the judgment.

Raymond F. Burghardt
CLERK

727 A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY,

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW,

Defendants.

VERDICT

72 Civ. 2363

On the First Cause of Action

1. Did any of the defendants violate plaintiff's rights under the Landrum-Griffin Act? (Answer yes or no) YES

2. If your answer to Question 1 is "no", your verdict is for defendants on this cause of action and you should proceed to Question 6.

3. If your answer to Question 1 is "yes", check which defendant or defendants violated plaintiff's rights under the Landrum-Griffin Act:

National Maritime Union	✓ YES
Joseph Curran	✓ YES
Shannon J. Wall	✓ YES
Charles Snow	✓ YES

4. If your answer to Question 1 is "yes", what were the actual damages, if any, sustained by plaintiff as a result? $ 500.00

5. If your answer to Question 1 is "yes", what punitive damages, if any, do you wish to award? $220,000.00

5A) NMU $50,000.00; J. Curran $100,000.00, S. Wall $60,000.00, C. Snow $10,000.00

On the Second Cause of Action

6. Did any of the defendants maliciously prosecute plaintiff? (Answer yes or no) YES

7. If your answer to Question 6 is "no", your verdict will be for defendants on this cause of action and you need answer no further questions.

8. If your answer to Question 6 is "yes", check which defendant or defendants you find to have maliciously prosecuted plaintiff:

National Maritime Union ✓ YES

Joseph Curran ✓ YES

Shannon J. Wall ✓ YES

Charles Snow ✓ YES

9. If your answer to Question 6 is "yes", what were the actual damages, if any, sustained by plaintiff as a result? $ 3,000.00

On the Third Cause of Action

10. If your answer to Question 6 is "yes", what punitive damages, if any, do you wish to award? $ 110,000.00

10A) NMU $50,000.00 J. Curran $25,000.00; S. Wall $15,000.00; C. Snow $20,000.00

A 201 Affidavit of Service by Mail — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

- against -

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-appellee.

Index No. 5

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Eugene L. St. Louis *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1235 Plane Street, Union, N.J. 07083

That on the 28th *day of* October 1975, *deponent served the annexed* Appendix

upon 1) Harold E. Konn P.A. *attorney(s) for*
2) Kenneth J. Finger

in this action, at 1) 1700 Market Street, Phila, Pa.,
2) 14 Mamaroneck Ave, White Plains, N.Y.

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 28th *day of* October 19 75

Robert T. Brii

Eugene L. St. Louis

Print name beneath signature

EUGENE L. ST. LOUIS

ROBERT T. BRII
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

- against -

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 310 W. 146th St., New York, N.Y.

That on the 28thv *day of* October *1975 at* see attached

deponent served the annexed Appendix *upon* see attached

the Attorney *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,*

Sworn to before me, this 28th *day of* October *19* 75

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0419950
Qualified in New York County
Commission Expires March 30, 1977

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